

# District of Columbia Code

*1981 Edition*



Property of the District of Columbia Government















# DISTRICT OF COLUMBIA CODE ANNOTATED

---

1981 EDITION

---

With Provision for Subsequent Pocket Parts

---

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,  
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA  
(EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE  
DISTRICT OF COLUMBIA BY REASON OF BEING  
GENERAL AND PERMANENT LAWS OF THE  
UNITED STATES), AS OF APRIL 12, 1997,  
AND NOTES TO DECISIONS  
THROUGH MARCH 1, 1997

---

VOLUME 7A

1997 REPLACEMENT

---

TITLE 35—INSURANCE

TITLE 36—LABOR

---

Prepared and Published Under Authority of the Council of the District  
of Columbia as supervised by the Office of the General Counsel,  
Charlotte M. Brookins-Hudson, General Counsel.  
John E. McNeal, Legislative Counsel.  
Benjamin F. Bryant, Jr., Codification Counsel.  
Karen R. Westbrook, Codification Assistant.

Edited and Annotated by the Editorial Staff of the Publishers  
Under the Supervision of Richard W. Walter, Jr., Peter R. Roane,  
Ruth P. Knight, Wanda F. Brown Roszak,  
Ricard J. Dunay, and Valerie H. Southard.

---

MICHIE

CHARLOTTESVILLE, VIRGINIA  
1997



COPYRIGHT © 1981 — 1997  
By  
THE DISTRICT OF COLUMBIA

---

All rights reserved.



4167311

“Michie” and the Open Book and Gavel logo are trademarks of  
Michie, a division of Reed Elsevier Inc.



# COUNCIL OF THE DISTRICT OF COLUMBIA

Charlene Drew Jarvis,  
*Chairman Pro Tempore\**

Sandra Allen  
Sharon Ambrose  
Harold Brazil  
Kevin P. Chavous  
Linda W. Cropp  
Jack Evans

Hilda Howland M. Mason  
Kathleen Patterson  
Carol Schwartz  
Frank Smith, Jr.  
Harry Thomas, Sr.

\*At the deadline for publication of the code there was a vacancy in office of the Chairman.

---

## OFFICE OF THE GENERAL COUNSEL

Under Whose Direction This  
Volume Has Been Prepared

Charlotte M. Brookins-Hudson, *General Counsel*  
John E. McNeal, *Legislative Counsel*  
Benjamin F. Bryant, Jr., *Codification Counsel*  
Karen R. Westbrook, *Codification Assistant*





IN MEMORY OF  
DAVID ALLEN CLARKE

1943 - 1997

Whose lifetime of service to District residents and employees of the District government exemplified all that is honorable in a lawyer and public servant. David Clarke was the Chairman of the Council of the District of Columbia from January 2, 1983, to January 2, 1991, and from September 1993 until his death on March 27, 1997. Under his leadership the Council adopted the first enacted title to the D.C. Code since the 1974 enactment of Home Rule in the District—the enactment of Title 47 of the D.C. Code. Through his legislative initiatives, the Council of the District of Columbia passed a wealth of legislation beneficial to the citizens of the District. His court challenges helped to further develop the body of law in the District as it pertains to initiatives, First Amendment rights of Council members, and the controls on firearms. Because of the determination of David A. Clarke, the people of the District of Columbia now have better access to and confidence in their laws and will enter the next century better prepared to face the challenges that lie ahead.



Digitized by the Internet Archive  
in 2014

## **USER'S GUIDE**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.





# TITLES OF DISTRICT OF COLUMBIA CODE

---

## PART I.—GOVERNMENT OF DISTRICT

### Title

1. Administration.
2. District Boards and Commissions.
3. Public Care Systems.
4. Police and Fire Departments.
5. Building Restrictions and Regulations.
6. Health and Safety.
7. Highways, Streets, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.

## PART II.—JUDICIARY AND JUDICIAL PROCEDURE

- \*11. Organization and Jurisdiction of the Courts.
- \*12. Right to Remedy.
- \*13. Procedure Generally.
- \*14. Proof.
- \*15. Judgments and Executions; Fees and Costs.
- \*16. Particular Actions, Proceedings and Matters.
- \*17. Review.

## PART III.—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- \*18. Wills.
- \*19. Descent and Distribution.
- \*20. Probate and Administration of Decedents' Estates.
- \*21. Fiduciary Relations and the Mentally Ill.

## PART IV.—CRIMINAL LAW AND PROCEDURE

22. Criminal Offenses.
- \*23. Criminal Procedure.
24. Prisoners and Their Treatment.

## PART V.—GENERAL STATUTES

25. Alcoholic Beverages.

---

\*Title has been enacted as law.

## Title

- 26. Banks and Other Financial Institutions.
- 27. Cemeteries and Crematories.
- \*28. Commercial Instruments and Transactions.
- 29. Corporations.
- 30. Domestic Relations.
- 31. Education and Cultural Institutions.
- 32. Eleemosynary, Curative, Correctional, and Penal Institutions.
- 33. Food and Drugs.
- 34. Hotels and Lodging Houses.
- 35. Insurance.
- 36. Labor.
- 37. Libraries.
- 38. Liens.
- 39. Military.
- 40. Motor Vehicles and Traffic.
- 41. Partnerships.
- 42. Personal Property.
- 43. Public Utilities.
- 44. Railroads and Other Carriers.
- 45. Real Property.
- 46. Social Security.
- †47. Taxation and Fiscal Affairs.
- 48. Trademarks and Trade Names.
- 49. Compilation and Construction of Code.

---

\*Title has been enacted as law.

†Title has been enacted as law, except Charter Provisions.



# Table of Contents

## Title 35

### Insurance

CHAPTER	PAGE
1. Insurance Department; General Provisions .....	2
1A. Department of Insurance and Securities Regulations .....	10
2. Provisions Applicable to More Than One Kind of Insurance .....	14
3. Life Insurance; Definitions .....	33
4. Department of Insurance With Respect to Life Companies .....	36
5. Provisions Relating to All Life Insurance Companies .....	56
6. Domestic Life Companies .....	130
7. Foreign and Alien Life Companies .....	167
8. Life Insurance; Penalties; Testimony; Separability .....	169
9. Industrial Life Insurance .....	170
10. Credit Life, Accident, and Health Insurance .....	172
11. Newborn Health Insurance .....	180
12. Fraternal Benefit Associations .....	184
13. Insurance Agents Other Than Life .....	202
13A. Insurance Agents and Brokers Licensing .....	203
14. Marine Insurance .....	217
15. Fire, Casualty, and Marine Insurance .....	240
16. Regulation of Fire Insurance Rates .....	276
17. Regulation of Casualty and Other Insurance Rates .....	277
18. Insurance Placement .....	288
19. Insurance Guaranty Association .....	297
19A. Life and Health Insurance Guaranty Association .....	298
20. Holding Company System .....	317
21. Compulsory/No-Fault Motor Vehicle Insurance .....	318
22. Medicare Supplement Insurance .....	350
23. Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage	351
23A. Health Insurance Claim Forms .....	361
24. Cancer Prevention .....	362
25. Liability Coverage for Child Development Homes Insurance .....	364
26. Medicare Supplement Insurance .....	366
27. Insurance Regulatory Trust Fund .....	374
28. Insurers Rehabilitation and Liquidation Procedures .....	380
29. Risk Retention .....	427
30. Managing General Agents .....	441
31. Reinsurance Intermediary .....	447
32. Annual Audited Financial Reports .....	458
33. Credit for Reinsurance .....	469
34. Required Annual Financial Statements and Participation in the NAIC Insurance Regulatory Information System .....	475
35. Standards to Identify Insurance Companies Deemed to Be in Hazardous Financial Condition .....	478

CHAPTER	PAGE
36. Law on Examinations .....	482
37. Holding Companies .....	490
38. Life Insurance Actuarial Opinion of Reserves .....	518
39. Property and Liability Insurance Guaranty Association .....	520
40. Business Transacted With Producer Controlled Insurer .....	530
41. Insurance Industry Material Transactions Disclosures .....	536
42. Insurance Demutualization .....	540
43. Redomestication .....	549
44. State of Entry for Non-U.S. Insurers .....	551
45. Health Maintenance Organizations .....	557
46. Risk-Based Capital .....	590
47. Hospital and Medical Services Corporation Regulation .....	602

**Title 36**

**Labor**

1. Payment and Collection of Wages .....	627
2. Minimum Wages and Industrial Safety .....	633
3. Workers' Compensation .....	650
4. Voluntary Apprentices .....	709
5. Employment of Minors .....	716
6. Employment Opportunities .....	729
7. Public Employment Service .....	733
8. Lie Detectors .....	737
9. Miscellaneous Provisions .....	739
10. Employment Services Licensing and Regulation .....	740
11. Government Pay Equity and Training .....	756
12. Occupational Safety and Health .....	762
13. Family and Medical Leave .....	782
14. Health Care Benefits Expansion .....	795
15. Displaced Workers Protection .....	800
16. Parental Leave .....	803

## TITLE 35. INSURANCE.

### Chapter

1. Insurance Department; General Provisions..... §§ 35-101 to 35-108.
- 1A. Department of Insurance and Securities Regulation. §§ 35-121 to 35-128.
2. Provisions Applicable to More Than One Kind of  
Insurance..... §§ 35-201 to 35-230.
3. Life Insurance; Definitions..... §§ 35-301 to 35-302.
4. Department of Insurance With Respect to Life  
Companies..... §§ 35-401 to 35-432.
5. Provisions Relating to All Life Insurance  
Companies..... §§ 35-501 to 35-536.
6. Domestic Life Companies..... §§ 35-601 to 35-649.
7. Foreign and Alien Life Companies..... §§ 35-701 to 35-702.
8. Life Insurance; Penalties; Testimony;  
Separability..... §§ 35-801 to 35-802.
9. Industrial Life Insurance..... §§ 35-901 to 35-905.
10. Credit Life, Accident, and Health Insurance..... §§ 35-1001 to 35-1012.
11. Newborn Health Insurance..... §§ 35-1101 to 35-1105.
12. Fraternal Benefit Associations..... §§ 35-1201 to 35-1228.
13. Insurance Agents Other Than Life..... [Repealed].
- 13A. Insurance Agents and Brokers Licensing..... §§ 35-1321 to 35-1334.
14. Marine Insurance..... §§ 35-1401 to 35-1432.
15. Fire, Casualty, and Marine Insurance..... §§ 35-1501 to 35-1562.
16. Regulation of Fire Insurance Rates..... [Repealed].
17. Regulation of Casualty and Other Insurance  
Rates..... §§ 35-1701 to 35-1710.
18. Insurance Placement..... §§ 35-1801 to 35-1811.
19. Insurance Guaranty Association..... [Repealed].
- 19A. Life and Health Insurance Guaranty  
Association..... §§ 35-1941 to 35-1956.
20. Holding Company System..... [Repealed].
21. Compulsory/No-Fault Motor Vehicle Insurance.... §§ 35-2101 to 35-2114.
22. Medicare Supplement Insurance..... [Repealed].
23. Drug Abuse, Alcohol Abuse, and Mental Illness  
Insurance Coverage..... §§ 35-2301 to 35-2311.
- 23A. Health Insurance Claim Forms..... § 35-2331.
24. Cancer Prevention..... §§ 35-2401 to 35-2403.
25. Liability Coverage for Child Development  
Homes Insurance..... §§ 35-2501 to 35-2503.
26. Medicare Supplement Insurance..... §§ 35-2601 to 35-2620.
27. Insurance Regulatory Trust Fund..... §§ 35-2701 to 35-2710.
28. Insurers Rehabilitation and Liquidation  
Procedures..... §§ 35-2801 to 35-2857.
29. Risk Retention..... §§ 35-2901 to 35-2912.
30. Managing General Agents..... §§ 35-3001 to 35-3006.
31. Reinsurance Intermediary..... §§ 35-3101 to 35-3110.

Chapter

- 32. Annual Audited Financial Reports..... §§ 35-3201 to 35-3214.
- 33. Credit for Reinsurance..... §§ 35-3301 to 35-3303.
- 34. Required Annual Financial Statements and  
Participation in the NAIC Insurance  
Regulatory Information System..... §§ 35-3401 to 35-3404.
- 35. Standards to Identify Insurance Companies  
Deemed to Be in Hazardous Financial  
Condition..... §§ 35-3501 to 35-3503.
- 36. Law on Examinations..... §§ 35-3601 to 35-3607.
- 37. Holding Companies..... §§ 35-3701 to 35-3728.
- 38. Life Insurance Actuarial Opinion of Reserves..... § 35-3801.
- 39. Property and Liability Insurance Guaranty  
Association..... §§ 35-3901 to 35-3915.
- 40. Business Transacted With Producer Controlled  
Insurer..... §§ 35-4001 to 35-4008.
- 41. Insurance Industry Material Transactions Disclosures..... §§ 35-4101 to  
35-4103.
- 42. Insurance Demutualization..... §§ 35-4201 to 35-4215.
- 43. Redomestication..... §§ 35-4301 to 35-4305.
- 44. State of Entry for Non-U.S. Insurers..... §§ 35-4401 to 35-4407.
- 45. Health Maintenance Organizations..... §§ 35-4501 to 35-4530.
- 46. Risk-Based Capital..... §§ 35-4601 to 35-4613.
- 47. Hospital and Medical Services Corporation Regulation.... §§ 35-4701 to  
35-4724.

CHAPTER 1. INSURANCE DEPARTMENT; GENERAL PROVISIONS.

Sec.

- 35-101. [Repealed].
- 35-102. General duties of Commissioner; com-  
panies or associations to file cer-  
tain information; service of legal  
process; rules and regulations.
- 35-103. [Repealed].
- 35-104. Same — Foreign companies or associ-  
ations.

Sec.

- 35-105. Required annual statement of busi-  
ness; tax payments.
- 35-106. Required annual reports of Commis-  
sioner — Contents.
- 35-107. Same — Publication and distribution.
- 35-108. Capital requirements of companies or  
associations.

§ 35-101. Establishment; appointment of Superintendent and clerk.

Repealed. \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(c), 44 DCR 1730.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996,

and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Department of Insurance abolished.** — The Department of Insurance, including the



Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred

to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

### **§ 35-102. General duties of Commissioner; companies or associations to file certain information; service of legal process; rules and regulations.**

(a) It shall be the duty of the Commissioner to see that all laws of the United States relating to insurance or insurance companies, benefit orders, associations, and others doing insurance business in the District are faithfully executed, to keep on file in the Insurance Administration office copies of the charters, declarations of organizations, or articles of incorporation of every company, association, or order doing business in the District.

(b) Before any such insurance company, association, or order shall be licensed to do business in the District it shall file with the Commissioner a copy of its charter, declaration of organization, or articles of incorporation duly certified in accordance with the law by the Commissioner of Insurance and Securities, Insurance Commissioner, or other proper officers of the state, territory, or nation where the company, association, group, or organization was organized, a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein and any other information required by the Commissioner; and a duly executed instrument appointing some suitable person in the District of Columbia, or not 10 miles beyond the territorial limits of the District of Columbia, as the agent for such company, upon whom all lawful process in any action or legal proceeding against it in the District may be served and shall register with the Commissioner the address of its principal office and the name and address of its agent for service of process in the District, including any changes in address.

(c) Should said company refuse to appoint such agent, or should any person, after making reasonable efforts to do so (which efforts shall be documented), be unable to serve such agent, said legal process shall be served upon the Commissioner and shall be deemed service upon the company. The Commissioner may by regulation establish fees to be paid when legal process is served upon the Commissioner pursuant to this section. Whenever the Commissioner is served pursuant to this section, he or she shall forward forthwith such process by certified mail to the company named therein, and shall maintain a

log showing when such process was served upon the Commissioner and when it was forwarded to the person named therein. The Commissioner shall provide to any person, upon request, the name and address of the agent for any company, or in the alternative, a list of all such agents.

(d) Any company, association, group, or organization that fails to comply with the requirements of subsection (b) of this section shall be guilty of a misdemeanor and shall be fined not more than \$500 a day for each violation. Civil fines, penalties, and fees may be imposed as alternative sanctions on any company, association, group, or organization that fails to comply with the requirements of subsection (b) of this section, or any rules or regulations issued pursuant to this section. Any company, association, group, or organization against which a fine, penalty, or fee has been imposed may, within 30 days after notice of the penalty is sent, contest the imposition or the amount of the civil fine, penalty, or fee. The hearing shall commence not less than 10 days nor more than 30 days from the date the request for the hearing is received by the Commissioner. The hearing shall be conducted according to the rules for contested cases enumerated in Title 26 (Insurance) of the District of Columbia Municipal Regulations (26 DCMR).

(e) The Commissioner shall maintain as confidential any documents or information received from the National Association of Insurance Commissioners or insurance departments of other states which is confidential in such other jurisdictions. The Commissioner may share information, including otherwise confidential information, with the National Association of Insurance Commissioners or insurance departments of other states so long as such other jurisdictions agree to maintain the same level of confidentiality as is available under District of Columbia law. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 646; Jan. 17, 1912, 37 Stat. 53, ch. 11; 1973 Ed., § 35-102; June 14, 1994, D.C. Law 10-128, § 404, 41 DCR 2096; Mar. 21, 1995, D.C. Law 10-233, § 2, 42 DCR 24; Apr. 18, 1996, D.C. Law 11-110, § 35, 43 DCR 530; May 24, 1996, D.C. Law 11-121, § 2, 43 DCR 1538; \_\_\_\_\_, 1997, D.C. Law 11- (ACT 11-524), § 10(d), 44 DCR 1730.)

**Cross references.** — As to rules and regulations governing annual statements, see § 35-103.

As to effect of failure to file annual statements, see §§ 35-103 and 47-2607.

As to effect of failure to pay taxes, see § 35-105.

As to revocation or suspension of permit for impairment of capital, see § 35-202.

As to effect of failure of domestic company to keep books, records, and files within District, see § 35-204.

As to insurance under Employees' Compensation Act, see § 35-205.

As to revocation or suspension of license or certificate of authority of life insurance companies, see § 35-405.

As to rules and regulations governing liquidation of life insurance companies, see § 35-419.

As to revocation or suspension of license of life insurance agents, see §§ 35-426 to 35-428.

As to revocation or suspension of organization permits of domestic life companies, see § 35-606.

As to rules and regulations governing election to convert stock company to mutual company, see § 35-619.

As to revocation of license of marine insurance agents, see § 35-1424.

As to enlargement of Department for purpose of administering laws regulating marine insurance, see § 35-1429.

As to revocation or suspension of certificate of authority of fire, casualty, or marine insurance company, see § 35-1506.

As to revocation or suspension of license of fire, casualty, or marine insurance agent, see § 35-1540.

As to senior citizen motor vehicle accident



prevention course certification, see subchapter II of Chapter 4 of Title 40.

As to liability policy or bond for motor carriers, see § 44-301.

As to licenses for insurance companies, see § 47-2603.

**Section references.** — This section is referred to in §§ 35-201, 35-643, 35-701, 35-1302, 35-1526, 35-1706, 35-2903, 35-2907, 35-3102, 35-3301, and 35-4703.

**Effect of amendments.** — D.C. Law 10-233 rewrote this section.

D.C. Law 11-110 validated a previously made punctuation change in the second sentence of (c).

D.C. Law 11-121 added (e).

D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section; and substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance" in (b).

**Legislative history of Law 10-128.** — Law 10-128, the "Omnibus Budget Support Act of 1994," was introduced in Council and assigned Bill No. 10-575, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 22, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 14, 1994, it was assigned Act No. 10-225 and transmitted to both Houses of Congress for its review. D.C. Law 10-128 became effective on June 14, 1994.

**Legislative history of Law 10-233.** — Law 10-233, the "Insurers Service of Process Act of 1994," was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 11-110.** — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Legislative history of Law 11-121.** — Law 11-121, the "Insurance Confidentiality of Information Act of 1996," was introduced in Council and Assigned Bill No. 11-168, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the

mayor on March 15, 1996, it was assigned Act No. 11-228 and transmitted to both Houses of Congress for its review. D. C. Law 11-121 became effective on May 24, 1996.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-101.

**Department of Insurance abolished.** — See note to § 35-101.

**Application of insurance statutes.** — Statutes regulating the business of insurance are not intended for application to all organizations having some element of risk assumption or distribution in their operations. Metropolitan Police Retiring Ass'n v. Tobriner, 306 F.2d 775 (D.C. Cir. 1962).

The legislation relating to insurance of the District of Columbia is so elaborate that the court is not inclined to strain its coverage to include an activity left uncovered by the ordinary meaning of language used. Metropolitan Police Retiring Ass'n v. Tobriner, 306 F.2d 775 (D.C. Cir. 1962).

**Application to companies organized outside District.** — Section applies to companies organized without the District and doing business within the District. American Home Life Ins. Co. v. Drake, 30 App. D.C. 263 (1908).

**Geographic discrimination.** — The Council of the District of Columbia does not have the authority under either its police power or this title to pass basic property insurance regulations designed to prohibit geographic discrimination within the District. Firemen's Ins. Co. v. Washington, 333 F. Supp. 951 (D.D.C. 1971), modified, 483 F.2d 1323 (D.C. Cir. 1973).

Council has the authority to adopt a regulation generally precluding an insurance company from considering the geographic location in determining whether to insure or continue to insure auto, fire, and casualty risks in the District and prohibiting cancellation of those policies for other than specified conditions. Firemen's Ins. Co. v. Washington, 483 F.2d 1323 (D.C. Cir. 1973).

**Limitation on power of Commissioner of Insurance and Securities.** — No provision of the law conferred or attempted to confer upon the Superintendent of Insurance (now Commissioner of Insurance and Securities) the power to make and enforce an interpretation of the laws relating to insurance companies, agents, or brokers. Such power is a judicial one, that can be exercised by the courts alone. Drake v. United States ex rel. Bates, 30 App. D.C. 312 (1908).

There is neither express nor implied authority in the Superintendent (now Commissioner) to make rules or to apply the drastic provisions of those rules solely to mutual companies, and without such authority, the limit of his power is to make rules consistent with the provisions of the law. Hutchins Mut. Ins. Co. v. Hazen, 105 F.2d 53 (D.C. Cir. 1939).

Cited in *Jordan v. Group Health Ass'n*, 107 F.2d 239 (D.C. Cir. 1940).

### § 35-103. Required annual financial statements of companies or associations — Contents; publication.

Repealed. Oct. 21, 1993, D.C. Law 10-42, § 7(a), 40 DCR 6020.

**Cross references.** — As to annual statements of health, accident, and life insurance companies, see § 35-202.

As to annual statements of fire, casualty, and marine insurance companies, see § 35-1511.

As to annual statements of Lloyd's organizations, see § 35-1524.

As to taxation and fiscal affairs of insurance companies, see § 47-2601 et seq.

**Legislative history of Law 10-42.** — Law 10-42, the "Required Annual Financial Statements and Participation in the NAIC Insurance

Regulatory Information System Act of 1993," was introduced in Council and assigned Bill No. 10-129, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-77 and transmitted to both Houses of Congress for its review. D.C. Law 10-42 became effective on October 21, 1993.

### § 35-104. Same — Foreign companies or associations.

The financial statements of insurance companies or associations, required hereby to be filed annually with the Commissioner of Insurance and Securities, shall set forth specifically the assets, liabilities, and conduct of the affairs within the United States of companies or associations organized outside of the territorial limits of the United States, and such statement shall be verified under oath by the manager and assistant manager or other proper officers of such companies or associations within the United States; and so much of this chapter as requires the publication of annual statements shall only extend to the statements respecting the affairs of such foreign companies or associations within the United States. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 649; 1973 Ed., § 35-104; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DCR 1730.)

**Cross references.** — As to annual statements and taxes, see §§ 35-103 and 35-202.

As to taxation and fiscal affairs of insurance companies, see § 47-2601 et seq.

**Section references.** — This section is referred to in § 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of In-

surance and Securities" for "Superintendent of Insurance."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-101.

**Department of Insurance abolished.** — See note to § 35-101.

### § 35-105. Required annual statement of business; tax payments.

Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the Commissioner, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next



preceding, and said Commissioner shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the Collector of Taxes before March 1st of each year a sum equal to 2% of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in §§ 35-1301 and 35-1302; and upon the failure of any company to pay said taxes before March 1st, as aforesaid, the license of said company shall be revoked and a penalty of 8% per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6; 1973 Ed., § 35-105; Apr. 19, 1977, D.C. Law 1-124, title X, § 1000, 23 DCR 8749; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DCR 1730.)

**Cross references.** — As to annual statements and taxes, see §§ 35-103 and 35-202.

As to taxation of marine insurance companies, see § 35-1411.

As to taxation and fiscal affairs of insurance companies, see § 47-2601 et seq.

As to liability for failure to pay tax, see § 47-2609.

As to retaliatory charges against certain insurance companies, see § 47-2610.

**Section references.** — This section is referred to in § 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" twice.

**Legislative history of Law 1-124.** — Law 1-124, the "Revenue Act for Fiscal Year 1978," was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-101.

**Department of Insurance abolished.** — See note to § 35-101.

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, trans-

ferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

**Inapplicability of section.** — This section does not apply to assessment companies organized solely for mutual protection. *American Home Life Ins. Co. v. Drake*, 30 App. D.C. 263 (1908).



The business of a group health association is not that of insurance so as to bring it within this section. *Jordan v. Group Health Ass'n*, 107 F.2d 239 (D.C. Cir. 1939).

This section was not intended for application to all organizations having some element of

risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n v. Tobriner*, 306 F.2d 775 (D.C. Cir. 1962).

**Cited in** *District of Columbia v. Georgetown Gas Light Co.*, 45 App. D.C. 63 (1916).

## § 35-106. Required annual reports of Commissioner — Contents.

The Commissioner of Insurance and Securities shall report annually to the Mayor of the District, on or before the 31st day of March, the financial condition of each insurance company and association doing business in said District, as of the 31st day of December next preceding. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 651; 1973 Ed., § 35-106; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1302 and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-101.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-101.

## § 35-107. Same — Publication and distribution.

After May 18, 1910, the annual reports of the Commissioner of Insurance and Securities shall be printed and bound in 1 volume, and shall be ready for distribution not later than the 1st day of the next regular session of Congress thereafter. (May 18, 1910, 36 Stat. 379, ch. 248, § 1; 1973 Ed., § 35-107; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(e), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1302 and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-101.

**Department of Insurance abolished.** — See note to § 35-101.

## § 35-108. Capital requirements of companies or associations.

It shall be the duty of the said Commissioner of Insurance and Securities to ascertain whether the capital required by law or the charter of each insurance

company or association organized under the laws of the District of Columbia has been actually paid up in cash and is held by its board of directors subject to their control, according to the provisions of their charter, or has been invested in property worth not less than the full amount of the capital stock required by its charter; or, if a mutual company, that it has received and is in actual possession of securities, as the case may be, to the full extent of the value required by its charter; and the president and secretary of such company or association shall make a declaration under oath to said Commissioner, who is hereby empowered to administer oaths when hereby required, that the tangible assets exhibited to him represent bona fide the property of the company or association, which sworn declaration shall be filed and preserved in the office of said Commissioner; and any such officer swearing falsely in regard to any of the provisions hereof shall be deemed guilty of perjury and shall be subject to all the penalties prescribed by law in the District of Columbia for that crime. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 652; 1973 Ed., § 35-108; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DCR 1730.)

**Cross references.** — As to inspection and examination of insurance companies, see §§ 35-201, 35-202, 35-418, 35-1203, and 35-1513.

As to impairment of capital, see § 35-201.

As to requirements concerning capital stock, see § 35-202.

**Section references.** — This section is referred to in § 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” once and substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-101.

**Department of Insurance abolished.** — See note to § 35-101.

CHAPTER 1A. DEPARTMENT OF INSURANCE AND SECURITIES REGULATION.

Sec.  
35-121. Definitions.  
35-122. Establishment of the Department of Insurance and Securities Regulation.  
35-123. Functions and duties.  
35-124. Commissioner of Insurance and Securities.

Sec.  
35-125. Transfers.  
35-126. Organization.  
35-127. Department of Insurance and Securities Regulation funding.  
35-128. Abolition of Insurance Administration.

§ 35-121. Definitions.

For the purposes of this act, the term:

(1) "Commissioner" means the Commissioner of Insurance and Securities, who shall be the chief executive officer of the Department of Insurance and Securities Regulation.

(2) "Department" means the Department of Insurance and Securities Regulation.

(3) "Deputy Commissioner" means the director of operations of the Insurance Bureau.

(4) "District" means the District of Columbia.

(5) "Insurance Bureau" means the office overseeing regulation of insurance, insurers and health maintenance organizations.

(6) "Securities Bureau" means the office overseeing regulation of securities.

(7) "Securities Director" means the Director of the Securities Bureau. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 2, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was as-

signed Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**References in text.** — 'This act', referred to in the introductory language of this section, is D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation Establishment Act of 1996, which is codified primarily throughout this title.

§ 35-122. Establishment of the Department of Insurance and Securities Regulation.

Pursuant to § 1-227(b), the Council establishes the Department of Insurance and Securities Regulation as a cabinet level agency of the executive branch of the Government of the District of Columbia, under the supervision of the Commissioner of Insurance and Securities. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 3, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-121.

**§ 35-123. Functions and duties.**

(a) The functions and duties contained and referenced herein are transferred to the Department and shall be performed by the following major organizational components of the Department.

(1) All duties and responsibilities in respect to the regulation of life and health and property and casualty insurance, insurers, and health maintenance organizations that heretofore have been given to the Mayor, the Superintendent of Insurance, or the Insurance Administrator, by virtue of various District of Columbia laws, shall be assumed by the Commissioner of Insurance and Securities who shall exercise those regulatory responsibilities through the Insurance Bureau.

(2) All functions and duties assigned to the Public Service Commission in Chapter 26 of Title 2 and Chapter 26A of Title 2, shall be assumed by the Commissioner of Insurance and Securities, who shall exercise those regulatory responsibilities through the Securities Bureau.

(b) The Mayor, at his or her discretion, may transfer the regulatory functions and duties of other executive offices and agencies to the Department. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 4, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-121.

**§ 35-124. Commissioner of Insurance and Securities.**

(a) The Commissioner of Insurance and Securities shall be appointed by the Mayor, with the advice and consent of the Council, pursuant to § 1-242(1).

(1) Notwithstanding the provisions of § 1-612.7(c), the rate of pay for the Commissioner of Insurance and Securities, or for any other position in the Department for which the Mayor deems it necessary, may exceed the rate of pay for the Mayor.

(2) The Mayor shall submit a resolution to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and periods of Council recess, indicating the proposed rate of pay for the Commissioner and for each other employee in the Department. A resolution which has not been approved or disapproved, in whole or part, within the prescribed period of 45 days shall be deemed approved by the Council.

(b) The Commissioner shall employ staff as needed, in accordance with annual appropriations. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 5, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-121.

**§ 35-125. Transfers.**

All positions, property, records, and unexpended balances of appropriations, allocations, assessments, and other funds available or to be made available to the Department of Consumer and Regulatory Affairs and the Public Service Commission relating to the duties and functions assigned herein, are trans-



ferred to the Department of Insurance and Securities Regulation. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 6, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-121.

### § 35-126. Organization.

The Commissioner of Insurance and Securities, as the chief executive officer of the Department of Insurance and Securities Regulation, is authorized to organize the personnel and property transferred herein within any organizational unit of the Department as the Commissioner deems appropriate. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 7, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-121.

### § 35-127. Department of Insurance and Securities Regulation funding.

(a) Control of the Insurance Regulatory Trust Fund, and all monies required to be deposited therein, pursuant to Chapter 37 of this title, is transferred to the Department of Insurance and Securities Regulation.

(b) There is established within the General Fund of the District of Columbia a trust fund designated as the Securities Regulatory Trust Fund, to which shall be credited all funds obtained pursuant to securities regulation. Any monies received but not expended in a given fiscal year shall be returned to the General Fund. Subject to the applicable laws relating to the appropriation of District funds, monies received and deposited in the Securities Regulatory Trust Fund shall be used to fund the expenses of the Securities Bureau in the discharge of its administrative and regulatory duties as prescribed by law. All licensing fees and fines, and any other fees determined by the Mayor to be necessary to securities regulation, shall be collected by the Securities Bureau and deposited into the fund. The Mayor shall be responsible for the deposit and expenditure of these monies as provided by law.

(c) The administrative costs of the Department, including the compensation of the Commissioner and the Department's central administrative staff, shall be charged on a pro-rata basis to each of the respective Bureau trust funds in a manner reflecting the central administrative costs associated with the operation of each Bureau. In no circumstances shall monies collected and deposited pursuant to the statutory funding requirements of the District of Columbia Securities Act, the Investment Advisors Act, and the Insurance Regulatory Trust Fund Act, be commingled or used to fund the regulatory activities of a bureau other than the bureau regulating the activities for which the respective funds were established.

(d) The Mayor shall submit to the Council, as part of the annual budget, a budget for the Department and a request for an appropriation for expenditures from the Insurance Regulatory Trust Fund and the Securities Regulatory Trust Fund. The Mayor's request shall be based on an estimated projection of

the expenditures necessary to perform the administration and regulatory functions of the Department. This estimate shall include, but not be limited to, expenditures for salaries, fringe benefits, overhead charges, travel, training, supplies, technical, professional, and any and all other services necessary to discharge the duties and responsibilities of this act. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 8, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-121.

**References in text.** — The “District of Columbia Securities Act”, referred to in (c), is the Act of August 30, 1964, 78 Stat. 620, Pub. L. 88-503, which is codified primarily as § 2-2601 et seq.

The “Investment Advisors Act”, referred to in (c), is D.C. Law 9-216, which is codified as § 2-2631 et seq.

The “Insurance Regulatory Trust Fund Act”, referred to in (c), is D.C. Law 10-40, which is codified as § 35-2701 et seq.

“This act”, referred to in (d), is D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation Establishment Act of 1996, which is codified primarily throughout this title.

## § 35-128. Abolition of Insurance Administration.

The Insurance Administration in the Department of Consumer and Regulatory Affairs as currently organized is abolished. (\_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 9, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-121.



## CHAPTER 2. PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE.

### *Subchapter I. General Provisions.*

Sec.

- 35-201. Maintenance of reinsurance reserve fund by life and fire insurance companies or associations; suspension or revocation of license for insolvency or impairment of capital; aiding unlicensed companies or associations; issuance of license.
- 35-202. "Health, accident, and life insurance companies" defined; assets or capital stock requirements; annual required tax and financial statement; annual required examinations; revocation or suspension of license; appeal; issuance of license; exemptions.
- 35-203. Copy of application by insured to be delivered with policy.
- 35-204. Principal office and books, records, and files of corporation to be in District; exception; reincorporation of certain corporations; violations; prosecutions.
- 35-205. Employees' compensation corporations or associations to file certain information with Commissioner; disapproval of premium rate or schedule; judicial review.

### *Subchapter II. Domestic Stock Insurance Companies.*

Sec.

- 35-211. Definition.
- 35-212. Rules and regulations with respect to proxies, consents, and authorizations; violations; exemptions.
- 35-213. Statements to be filed by beneficial owners, directors, or officers; sales restrictions; exemptions; equity security defined; rules and regulations; violations; effective date.
- 35-214. Authority and functions of government entities.

### *Subchapter III. Prohibition of Discrimination in the Provision of Insurance on Basis of AIDS Test.*

- 35-221. Definitions.
- 35-222. Application of subchapter.
- 35-223. Prohibited actions.
- 35-224. AIDS testing standards, protocols, and appeals.
- 35-225. Diagnosis of AIDS.
- 35-226. Informed consent requirements; restrictions on disclosure.
- 35-227. Contestability.
- 35-228. Special enforcement provisions.
- 35-229. Rules.
- 35-230. Prohibition against discrimination in use of AIDS tests.

### *Subchapter I. General Provisions.*

## **§ 35-201. Maintenance of reinsurance reserve fund by life and fire insurance companies or associations; suspension or revocation of license for insolvency or impairment of capital; aiding unlicensed companies or associations; issuance of license.**

All life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; and whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of 25% of its capital stock it shall be the duty of the Commissioner to suspend its license; and unless such impairment or insolvency shall be made good within 60 days thereafter, it shall be the duty of the Commissioner of Insurance and Securities to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a

penalty of \$20 for each day it transacts business without such license to be recovered by the Mayor of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid in carrying on the business of any such company, or shall act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding \$100, or, in default of payment thereof, by imprisonment in the jail of the District for not less than 10 nor more than 60 days. And the Commissioner of Insurance and Securities shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of § 35-102, subject, however, to the provisions of §§ 35-1301 and 35-1302; provided, that the Commissioner of Insurance and Securities shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 648; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 35-201; Oct. 5, 1985, D.C. Law 6-42, § 470(d), 32 DCR 4450; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DCR 1730.)

**Cross references.** — As to inspection and examination of insurance companies, see §§ 35-108, 35-202, 35-418, 35-1203, and 35-1513.

As to impairment of capital, see § 35-202.

As to deposits of life insurance companies, see §§ 35-415 to 35-417.

As to ability of minors to contract for health and accident insurance, see § 35-430.

As to benefits from health and accident insurance not being subject to claims of creditors, see § 35-522.

As to authority of life insurance companies to reinsure, see § 35-635.

As to application of chapter to marine insurance companies, see § 35-1402.

As to licensing fire, casualty, and marine insurance companies, see § 35-1505.

As to requirements concerning capital and surplus of fire, casualty, and marine insurance companies, see § 35-1516.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in §§ 35-1301 and 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” and substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” throughout the section.

**Legislative history of Law 6-42.** — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996,

and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Com-

missioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

**§ 35-202. “Health, accident, and life insurance companies” defined; assets or capital stock requirements; annual required tax and financial statement; annual required examinations; revocation or suspension of license; appeal; issuance of license; exemptions.**

Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as “health, accident, and life insurance companies or associations.” No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than \$25,000 as a capital or guarantee fund; which assets may be invested in United States, state, county, municipal bonds, and bonds of the District of Columbia, or railroad bonds; but investments in the bonds of railroads shall be limited to the bonds of those railroads which have paid dividends on their capital stock for the 10 years immediately previous to the date of the investment; or in improved real estate, or in first mortgages on



improved real estate; but no loan on real estate shall be made for an amount exceeding 70% of its assessed value, such investments to be approved by the Commissioner of Insurance and Securities of the District of Columbia. No such health, accident, and life insurance company or association, transacting on August 15, 1911, or thereafter the business of health, accident, and life insurance, or either or all said kinds of insurance, in the District of Columbia shall issue policies or certificates providing, either singly or in aggregate, a greater accident or death benefit than \$500, or a greater weekly indemnity than \$20, on any 1 person unless such company or association has in assets or in capital stock fully paid up in cash, or in both together, not less than \$100,000 invested and approved as aforesaid. Every such company or association shall pay to the Collector of Taxes for the District of Columbia a sum of money, as tax, equal to 1% of all moneys received from members of policy or certificate holders within the District of Columbia, said tax to be paid on or before the 1st day of March of each year on the amount of such income for the year ending December 31st next preceding; and shall also file annually with said Commissioner of Insurance and Securities, on or before the 1st day of March of each year, a sworn statement, on blanks furnished by said Commissioner of Insurance and Securities, showing its true financial condition, income, disbursements, assets, and liabilities on the 31st of December next preceding, and such other information as said Commissioner of Insurance and Securities may require; and shall pay to the said Collector of Taxes \$10 for filing such statement. All companies or associations described herein shall be examined as described in Chapter 36 of this title; and when the Mayor finds the capital stock of any such company impaired or its assets reduced in value to an amount less than required by the provisions hereof he shall at once give notice of said fact to said company or association, and unless said impairment is made good within 60 days after said notice, it shall be the duty of said Commissioner to revoke or suspend the license of said company or association until such impairment shall have been made good; and any company or association that issues policies or certificates of insurance as described herein without a license from said Commissioner or during a suspension thereof, as herein provided, shall be fined not less than \$20 nor more than \$100 per day; provided, that if any such company or association shall feel aggrieved by the decision of said Commissioner concerning the investment or impairment of its assets or capital stock, it shall have the right to appeal, within 10 days, from the decision of said Commissioner to the Mayor of the District of Columbia, and the Council of the District of Columbia shall prescribe rules and regulations for the hearing of said appeal, and the Mayor's decision shall be final; provided also, that when any such company or association shall have complied with the provisions contained herein, the Commissioner of Insurance and Securities shall issue to it a license to transact its business in the District of Columbia; provided, however, that nothing contained herein shall interfere with or abridge the rights of any fraternal beneficial association licensed to transact business under §§ 35-1201 to 35-1217, or incorporated by special act of Congress; and provided further, that nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted

men of the United States Army, Navy, or Air Force, or solely of employees of any other branch of the United States government service, or solely of employees of any individual, company, firm, or corporation. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 653; Aug. 15, 1911, 37 Stat. 16, ch. 12, § 1; 1973 Ed., § 35-202; Oct. 5, 1985, D.C. Law 6-42, § 470(e), 32 DCR 4450; Oct. 21, 1993, D.C. Law 10-49, § 9(a), 40 DCR 6110; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DC 1730.)

**Cross references.** — As to annual statements and taxes, see §§ 35-103 to 35-105, 35-1511, and 47-2601 et seq.

As to inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-418, 35-1203, and 35-1513.

As to deposits of life insurance companies, see §§ 35-415 to 35-417.

As to required policy provisions for health and accident insurance, see §§ 35-517 and 35-1532.

As to formation of domestic life companies, see § 35-601.

As to permissible investments, see §§ 35-634, 35-1418, 35-1419, and 35-1521.

As to inapplicability of marine insurance provisions, see § 35-1403.

As to provision that health and accident insurance may be written under Fire and Casualty Act, see § 35-1514.

As to capital and surplus requirements of fire, casualty, and marine insurance companies, see § 35-1516.

As to appeals under Fire and Casualty Act, see §§ 35-1547 and 35-1548.

**Section references.** — This section is referred to in §§ 35-1302 and 35-1403.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” and “Commissioner of Insurance and Securities” for “Superintendent of Insurance” throughout the section.

**Legislative history of Law 6-42.** — See note to § 35-201.

**Legislative history of Law 10-49.** — Law 10-49, the “Law on Examinations Act of 1993,” was introduced in Council and assigned Bill No. 10-131, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-947 and transmitted to both Houses of Congress for its review. D.C. Law 10-49 became effective on October 21, 1993.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-201.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(269) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-201.

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished



the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

**Exemption for nonprofit relief associations of government employees repealed.** — The 1940 act requiring that all fire, marine, and casualty companies doing business in the District of Columbia must obtain a certificate of authority expressly repealed the provision of

this section which exempts nonprofit relief associations composed of government employees from licensing and regulation. *National Fed'n of Post Office Clerks v. District of Columbia*, App. D.C., 173 A.2d 483 (1961).

**Association held subject to this section.** — See *Brotherhood of R.R. Trainmen v. Groves*, 48 App. D.C. 151 (1918), cert. denied, 248 U.S. 587, 39 S. Ct. 184, 63 L. Ed. 434 (1919).

Unincorporated nonprofit labor organization composed exclusively of postal clerks employed by the United States Post Office Department must obtain from the Superintendent of Insurance (now Commissioner of Insurance and Securities) a certificate of authority to operate its program of health insurance. *National Fed'n of Post Office Clerks v. District of Columbia*, App. D.C., 173 A.2d 483 (1961).

**Association not subject to provisions of section.** — The business of a group health association is not that of insurance so as to bring it within this section. *Jordan v. Group Health Ass'n*, 107 F.2d 239 (D.C. Cir. 1939).

**Section does not cover contracts to indemnify.** — This section does not include all insurance companies, but only those which provide for the payment of indemnity on account of sickness. This section does not include necessarily contracts to indemnify, but is limited to those which provide for the payment of indemnity. *Group Health Ass'n v. Moor*, 24 F. Supp. 445 (D.D.C. 1938).

**Cited in** *Provident Relief Ass'n v. Vernon*, 19 F.2d 709 (D.C. Cir. 1927); *Hutchins Mut. Ins. Co. v. Hazen*, 105 F.2d 53 (D.C. Cir. 1939); *Metropolitan Police Retiring Ass'n v. Tobriner*, 306 F.2d 775 (D.C. Cir. 1962).

## § 35-203. Copy of application by insured to be delivered with policy.

Each life insurance company, benefit order, and association doing a life insurance business in the District of Columbia shall deliver with each policy issued by it a copy of the application made by the insured so that the whole contract may appear in said application and policy, in default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 657; June 30, 1902, 32 Stat. 534, ch. 1329; 1973 Ed., § 35-203.)

**Section references.** — This section is referred to in §§ 35-902, 35-1302, and 35-4703.

**Section to be interpreted liberally.** — This section was intended to remedy a mischief and is to be given a liberal interpretation to that end. *Metropolitan Life Ins. Co. v. Burch*, 39 App. D.C. 397 (1912).

**Purpose of section.** — Purpose in adopting this section was to compel insurance companies

to state the entire contract either in the policy or in the policy and application, so that the insured would be able to find the terms defining his obligations and rights as a policyholder in not more than 2 papers. *Brotherhood of R.R. Trainmen v. Groves*, 48 App. D.C. 151 (1918), cert. denied, 248 U.S. 587, 39 S. Ct. 184, 63 L. Ed. 434 (1919).

**This section was enacted for protection**



of the insured, not the insurance company. *Blair v. Prudential Ins. Co. of Am.*, 472 F.2d 1356 (D.C. Cir. 1972).

**Effect of section on provision not embodied in contract.** — No provision in the rules or elsewhere of an insurance company or fraternal order which is not physically embodied in the policy or application should be regarded as a part of the contract. *Brotherhood of R.R. Trainmen v. Groves*, 48 App. D.C. 151 (1918), cert. denied, 248 U.S. 587, 39 S. Ct. 184, 63 L. Ed. 434 (1919).

**Effect of failure to attach application.** — Where insurer does not attach the written application, if any, to the policy, insurer may not defend on account of anything contained in or omitted from the application, and is barred from declaring policy void on account of alleged nondisclosure in application. *Walton v. Sun Life Ins. Co.*, App. D.C., 115 A.2d 310 (1955).

**Reinstatement of lapsed policy.** — This section applies to an application for reinstatement of a lapsed policy. *Metropolitan Life Ins. Co. v. Burch*, 39 App. D.C. 397 (1912).

**Fraudulent representations.** — Section applies to fraudulent representations in application for previous policy made part of second policy. *Northwestern Mut. Life Ins. Co. v. Gott*, 68 F.2d 426 (D.C. Cir. 1933).

**Oral applications.** — This section does not extend to an oral application. *Washington Fid. Nat'l Ins. Co. v. Burton*, 287 U.S. 97, 53 S. Ct. 26, 77 L. Ed. 196 (1932).

**Copy of entire application must be attached.** — A copy of the entire application must be attached, and it is not left to the discretion of the insurer to select such parts of the application as it may deem material for delivery with its policy. *Metropolitan Life Ins. Co. v. Hawkins*, 31 App. D.C. 493 (1908).

**Preliminary report need not be attached.** — A preliminary report, signed only by the agent, intended for the general information of the company and not referred to in the policy, is not part of the contract of insurance and need not be attached thereto. *Griffith v. Metropolitan Life Ins. Co.*, 36 App. D.C. 8 (1910).

**Medical authorization need not be attached.** — In light of the fact that the medical authorization form signed by the insured did not contain or call for any information, failure to attach the form to the life policy was imma-

terial, and did not violate this section or preclude the insurer from defending on the ground of the insured's failure to disclose his medical history. *Blair v. Prudential Ins. Co. of Am.*, 472 F.2d 1356 (D.C. Cir. 1972).

**Incorporation by reference insufficient.** — This section may not be satisfied by making a section of the constitution of the insurer a part of the contract by reference, for it requires an actual incorporation in the certificate and application of every element of the agreement "so that the whole contract may appear in said application and policy." *Brotherhood of R.R. Trainmen v. Groves*, 48 App. D.C. 151 (1918), cert. denied, 248 U.S. 587, 39 S. Ct. 184, 63 L. Ed. 434 (1919).

**Policy which by its terms constitutes entire agreement.** — Where a written application, if there was one, was not delivered with an industrial life policy, but where the policy by its terms constituted the entire agreement, this section did not prevent the insurer from making any defense that it has under the terms of the policy. *Eureka-Maryland Assurance Co. v. Gray*, 121 F.2d 104 (D.C. Cir.), cert. denied, 314 U.S. 613, 62 S. Ct. 114, 86 L. Ed. 494 (1941).

Where a life policy by its terms constitutes the entire agreement, this section does not prevent an insurer from basing a defense on a provision in the policy, even though the policy was issued on a written application and no copy of the application was delivered with the policy. *Pullen v. Sun Life Ins. Co. of Am.*, 121 F.2d 110 (D.C. Cir.), cert. denied, 314 U.S. 613, 62 S. Ct. 112, 86 L. Ed. 494 (1941).

**Insurer's defense not based on application.** — Where the insurer's defense is based on policy provisions that have no relation to the application not attached to the policy, that defense would not be disallowed under this section. *Walton v. Sun Life Ins. Co.*, App. D.C., 115 A.2d 310 (1955).

In an action on an industrial life policy declaring that it expresses the entire agreement between the parties, a defense which would be open to the insurer if no written application existed is not precluded by this section, and the insurer could defend on violation of policy provisions having no relation to the application. *Ferguson v. Quaker City Life Ins. Co.*, App. D.C., 129 A.2d 189 (1957).

## § 35-204. Principal office and books, records, and files of corporation to be in District; exception; reincorporation of certain corporations; violations; prosecutions.

(a) Any corporation now or hereafter formed or organized under any provision of law in force and effect in the District of Columbia to engage in an

insurance business shall maintain its principal office within said District and shall keep its books, records, and files therein, and shall not remove from said District either its principal office or its books, records, or files without the permission of the Mayor of the District of Columbia first had and obtained; provided, however, that nothing contained in this section shall be construed to apply to the books, records, and files of any such corporation kept in a branch office agency of such corporation, which books, records, and files relate solely to the business transacted by the said branch office agency; and provided further, that any insurance corporation created by special act of Congress is authorized upon resolution of its board of directors or trustees to reincorporate under the laws of any state of the United States, a certified copy of such resolution of such board of directors or trustees having first been filed in the Office of the Commissioner of Insurance and Securities of the District of Columbia and recorded in the Office of the Recorder of Deeds of the District of Columbia. Upon compliance with the above conditions, the assets of the said corporation shall thereby become vested in the new corporation. Said new corporation shall faithfully carry out any and every right, obligation, and liability of said original corporation.

(b) Any corporation violating any of the provisions of this section shall forthwith forfeit its charter, which forfeiture shall operate as a revocation of its license to do business within said District.

(c) Any officer, agent, or employee of any such corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than \$300 or be imprisoned for not more than 90 days, or by both such fine and imprisonment. All prosecutions under this section shall be upon information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel thereof or any of his assistants. (Mar. 3, 1901, ch. 854, § 657a; May 17, 1932, 47 Stat. 158, ch. 189; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 35-204; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1302, 35-3003, and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” in (a).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-201.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — Reorganization Order No. 43, Part VIII, dated June 23, 1953, delegated to the Superintendent of Insurance the function of granting or denying permission to remove from the District of Columbia the

principal office, books, records, and files of an insurance company, as set forth in subsection (a) of this section.

**Department of Insurance abolished.** — See note to § 35-201.

**§ 35-205. Employees' compensation corporations or associations to file certain information with Commissioner; disapproval of premium rate or schedule; judicial review.**

Every insurance corporation or association authorized to transact business in the District of Columbia, which insures employers against liability for compensation under the Employees' Compensation Act, shall file with the Commissioner of Insurance and Securities its manual of classifications and underwriting rules, together with basic rates for each class, and also merit rating plans designed to modify the class rates, none of which shall take effect until the Commissioner of Insurance and Securities shall have approved the same as adequate and reasonable for the group of risks to which they respectively apply. The Commissioner of Insurance and Securities may withdraw his approval of any premium rate or schedule made by any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate or unreasonable; provided, that upon petition of the company or association or any other party aggrieved the opinion of the Commissioner of Insurance and Securities shall be subject to review by the Superior Court of the District of Columbia: Provided further, that any petition for review shall be filed with said Court within 30 days after the rendition of opinion by the Commissioner of Insurance and Securities. (Mar. 3, 1901, ch. 854, § 657b; April 16, 1934, 48 Stat. 592, ch. 144; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(36); 1973 Ed., § 35-205; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(d), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-201.

**References in text.** — "The Employees' Compensation Act," referred to near the beginning of the first sentence, refers to Chapter 3 of Title 36.

**Department of Insurance abolished.** — See note to § 35-201.

*Subchapter II. Domestic Stock Insurance Companies.*

**§ 35-211. Definition.**

As used in this subchapter, unless the context otherwise requires, "domestic stock insurance company" means a stock insurance company incorporated or organized under the laws of the District of Columbia. (Apr. 18, 1966, 80 Stat. 123, Pub. L. 89-402, § 1; 1973 Ed., § 35-221.)



## § 35-212. Rules and regulations with respect to proxies, consents, and authorizations; violations; exemptions.

(a) The Council of the District of Columbia shall promulgate rules and regulations with respect to the solicitation and voting of proxies, consents, and authorizations of domestic stock insurance companies in conformity, as nearly as may be practicable, with those prescribed by the National Association of Insurance Commissioners. The Commissioner of Insurance and Securities (hereinafter "Commissioner") shall have power to revoke or suspend the certificate of authority to transact business in the District of Columbia of any such company which has failed or refused to comply with the rules and regulations promulgated by the Council.

(b) The Commissioner shall not revoke nor suspend the certificate of authority of any such company until he has given the company not less than 30 days notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing; provided, that if the Commissioner shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required; provided further, that in lieu of revoking or suspending the certificate of authority of any company, after hearing as herein provided, the Commissioner may subject such company to a penalty of not more than \$500 when, in his judgment, he finds that the public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Commissioner to the Mayor of the District of Columbia. At any hearing provided by this section, the Commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury.

(c) The provisions of subsections (a) and (b) of this section shall not apply to securities of a domestic stock insurance company if such securities shall be registered, or shall be required to be registered, pursuant to § 12 of the Securities Exchange Act of 1934, as amended (§ 78l of Title 15, United States Code). (Apr. 18, 1966, 80 Stat. 123, Pub. L. 89-402, § 2; 1973 Ed., § 35-222; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(f), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section; and substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance" in (a).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-201.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(418) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the Dis-

trict of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-201.

**§ 35-213. Statements to be filed by beneficial owners, directors, or officers; sales restrictions; exemptions; equity security defined; rules and regulations; violations; effective date.**

(a) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the Commissioner on or before the 31st day of December 1965, or within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the Commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the Commissioner a statement, in such form as the Commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than 6 months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Council of the District of Columbia by rules and regulations may exempt as not comprehended within the purpose of this section.

(c) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal: (1) Does not own the security sold; or (2) if owning the security, does not deliver it against such sale within 20 days



thereafter, or does not within 5 days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that, notwithstanding the exercise of good faith, he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The Council of the District of Columbia may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) The provisions of subsections (a), (b), and (c) of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Council of the District of Columbia may adopt in order to carry out the purposes of this section.

(f) The term "equity security" when used in this section means any stock or similar security; or any security convertible with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Council of the District of Columbia shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(g) The provisions of subsections (a), (b), and (c) of this section shall not apply to securities of a domestic stock insurance company if:

(1) Such securities shall be registered, or shall be required to be registered, pursuant to § 12 of the Securities Exchange Act of 1934, as amended (§ 78l of Title 15, United States Code); or

(2) such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of subsections (a), (b), and (c) of this section except for the provisions of this paragraph.

(h) The Council of the District of Columbia shall make such rules and regulations as may be necessary for the execution of the functions vested in the Commissioner by subsections (a) through (g) of this section, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provisions of subsection (a), (b), or (c) of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Council

notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(i) Any person who willfully violates any provision of this section, or any rule or regulation thereunder, the violation of which is made unlawful by this section or the observance of which is required under the terms of this section, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this section, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than \$1,000, or be imprisoned not more than 30 days, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6.

(j) This section shall take effect 30 days after April 18, 1966. (Apr. 18, 1966, 80 Stat. 123, Pub. L. 89-402, § 3; 1973 Ed., § 35-223; Oct. 5, 1985, D.C. Law 6-42, § 429, 32 DCR 4450; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(f), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-3725.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout (a) and in (h).

**Legislative history of Law 6-42.** — See note to § 35-201.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-201.

**References in text.** — “The Securities Exchange Act of 1934,” referred to in subsection (d) of this section, is classified to 15 U.S.C. §§ 77b to 77e, 77j, 77k, 77m, 77o, 77s, and 78a to 78hh. The definition of an exchange appears in 15 U.S.C. § 78c.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402 (419), (420), and (421) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-201.

## § 35-214. Authority and functions of government entities.

Nothing in this subchapter shall be construed so as to affect the authority vested in the Mayor of the District of Columbia by Reorganization Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Mayor or in any office or agency under the jurisdiction and control of said Mayor may be delegated by said Mayor in accordance with § 3 of such Plan. (Apr. 18, 1966, 80 Stat. 125, Pub. L. 89-402, § 4; 1973 Ed., § 35-224.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (419), (420), and (421) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406

of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### *Subchapter III. Prohibition of Discrimination in the Provision of Insurance on Basis of AIDS Test.*

## § 35-221. Definitions.

For the purposes of this subchapter, the term:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "ARC" means AIDS-related complex as defined by the Centers for Disease Control of the United States Public Health Service or, during any period when the Centers for Disease Control have not issued a definition, by the District of Columbia Commission of Public Health.

(3) "District" means the District of Columbia.

(4) "Health maintenance organization" means a public or private organization that is a qualifying health maintenance organization under federal regulations, or has been determined to be a health maintenance organization pursuant to regulations adopted by the State Health Planning and Development Agency of the District of Columbia.

(5) "HIV" means human immunodeficiency virus.

(6) "Mayor" means the Mayor of the District of Columbia.

(7) "Insurer" means any individual, partnership, corporation, association, fraternal benefit association, nonprofit health service plan, health maintenance organization, or other business entity that issues, amends, or renews individual or group health, disability, or life insurance policies or contracts, including health maintenance organization membership contracts, in the District. The term "insurer" shall include Group Hospitalization and Medical Services, Incorporated. (Aug. 7, 1986, D.C. Law 6-132, § 2, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(a), 36 DCR 471.)

**Legislative history of Law 6-132.** — Law 6-132, the "Prohibition of Discrimination in the Provision of Insurance Act of 1986," was introduced in Council and assigned Bill No. 6-343, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 13, 1986, and May 27, 1986, respectively. Signed by the Mayor on June 6, 1986, it was

assigned Act No. 6-170 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-208.** — See note to § 35-230.

**Constitutionality of subchapter.** — The Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-132) is an attempt by the D.C. Council to address the serious problem of securing insurance coverage



for individuals susceptible to the AIDS virus and given the evidence before the Council on the reliability of the screening tests and the medical testimony about the need to ensure access to care and treatment, the Council had a rational basis for the law and it is constitu-

tional under the Fifth Amendment. *American Council of Life Ins. v. District of Columbia*, 645 F. Supp. 84 (D.D.C. 1986).

**Cited in** *Mele v. First Colony Life Ins. Co.*, 127 Bankr. 82 (D.D.C. 1991).

## § 35-222. Application of subchapter.

The requirements of this subchapter shall apply to the practices and procedures employed by insurers and their agents and employees in making determinations about any individual or group policy or contract of health, disability, or life insurance. (Aug. 7, 1986, D.C. Law 6-132, § 3, 33 DCR 3615.)

**Legislative history of Law 6-132.** — See note to § 35-221.

## § 35-223. Prohibited actions.

(a) Repealed.

(b)(1) In determining whether to issue, cancel, or renew insurance coverage, an insurer may not use age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor or combination of factors for the purpose of seeking to predict whether any individual may in the future develop AIDS or ARC.

(2) In determining rates, premiums, dues, assessments, benefits covered, or expenses reimbursable, or in any other aspect of insurance marketing or coverage, an insurer may not use age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor or combination of factors for the purpose of seeking to predict whether any individual may in the future develop AIDS or ARC.

(c) No health or disability insurance policy or contract shall contain any exclusion, reduction, other limitation of coverage, deductibles, or coinsurance provisions related to the care and treatment of AIDS, ARC, HIV infection, or any illness or disease arising from these medical conditions, unless the provisions apply generally to all benefits under the policy or contract.

(d) No life insurance policy or contract shall contain any exclusion, reduction, or other limitation of benefits related to AIDS, ARC, HIV infection, or any disease arising from these medical conditions, as a cause of death. (Aug. 7, 1986, D.C. Law 6-132, § 4, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(b), 36 DCR 471.)

**Legislative history of Law 6-132.** — See note to § 35-221.

**Legislative history of Law 7-208.** — See note to § 35-230.

**Cited in** *Hood v. Prudential Ins. Co. of Am.*, 758 F. Supp. 764 (D.D.C. 1991); *Applewhite v. United States*, App. D.C., 614 A.2d 888 (1992).

## § 35-224. AIDS testing standards, protocols, and appeals.

(a)(1) Within 30 days of March 16, 1989, the District of Columbia Commissioner of Public Health ("Commissioner") shall certify the testing protocol that is the most reliable and accurate in identifying exposure to the probable



causative agent of AIDS, ARC, and the HIV infection. The notice of certification shall include an estimate based on scientific evidence of the proportion of false positive results expected in use of the testing protocol.

(2) Within 12 months from the date of the initial certification and at least annually thereafter, the Commissioner shall publish a new or renewal certification based upon an ongoing review of scientific evidence regarding the accuracy and reliability of the testing protocol.

(b)(1) A named insured who tests positive under the testing protocol certified by the Commissioner may appeal to the Commissioner of Insurance and Securities to review the testing procedures and results, and may present additional medical evidence, including the results of similar tests for exposure to the probable causative agent of AIDS that the named insured independently obtains, to rebut the positive test results. If the Commissioner of Insurance and Securities determines that the result of the test of the proposed insured is not a true positive, the Commissioner of Insurance and Securities shall order the insurer from which the applicant sought coverage to disregard the positive test result. The Commissioner of Insurance and Securities shall, when necessary, request the advice of the Commissioner in making this determination.

(2) Hearings related to the appeal provided for in paragraph (1) of this subsection shall be held in accordance with subchapter I of Chapter 15 of Title 1.

(3) An insurer shall apply standard underwriting practices, in accordance with applicable laws and rules of the District, to all life, health, or disability income insurance policies or contracts for individuals who test positive under the testing protocol certified by the Commissioner. (Aug. 7, 1986, D.C. Law 6-132, § 5, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(c), 36 DCR 471; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(g), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-226.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent” and for “Superintendent of Insurance” throughout (b)(1).

**Legislative history of Law 6-132.** — See note to § 35-221.

**Legislative history of Law 7-208.** — See note to § 35-230.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-201.

**Department of Insurance abolished.** — See note to § 35-201.

## § 35-225. Diagnosis of AIDS.

(a) Nothing in this subchapter shall be construed as preventing or restricting insurers or their agents or employees from following standard procedures for determining the insurability of or establishing the rates or premiums for new applicants diagnosed by a licensed physician as having AIDS, provided that the procedures:

(1) Apply in the same manner to all other new applicants within the same category of insurance;

(2) Are justified on the basis of actuarial evidence; and

(3) Comply with other laws and rules of the District.

(b) Repealed. (Aug. 7, 1986, D.C. Law 6-132, § 6, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(d), 36 DCR 471.)

**Legislative history of Law 6-132.** — See note to § 35-221.

**Legislative history of Law 7-208.** — See note to § 35-230.

## § 35-226. Informed consent requirements; restrictions on disclosure.

(a) No insurer shall request or require a proposed insured to take the testing protocol certified pursuant to § 35-224 without first obtaining the signature of the proposed insured or the legal guardian of the named insured on a standard informed consent statement prepared and furnished by the Commissioner of Insurance and Securities.

(b) An insurer shall provide information about the availability of counseling at public and private health facilities to each proposed insured who the insurer requests or requires to take the testing protocol.

(c) Before any proposed insured or his or her legal guardian is requested to sign an informed consent statement, the insurer shall provide the proposed insured, or his or her legal guardian an explanation of the nature of AIDS, ARC, and the HIV infection, an explanation of the testing protocol, including its purpose, potential uses, limitations, and an updated percentage of false positives, and notice of the right of the proposed insured to appeal to the Commissioner of Insurance and Securities, an explanation of the meaning of test results, and a description of the disclosure restrictions established by this subchapter.

(d) Once an insurer has requested a signature on an informed consent statement pursuant to subsection (a) of this section, and has complied with subsections (b) and (c) of this section, the proposed insured or legal guardian of the proposed insured may wait 14 days before signing the informed consent statement.

(1) An insurer shall not disclose the fact that a proposed insured was tested or the results of the test except to:

- (A) The proposed insured or the legal guardian of the proposed insured;
- (B) A court of competent jurisdiction, pursuant to a lawful court order;

or

(C) Any person named in a written authorization executed by the proposed insured or the legal guardian of the proposed insured.

(2) An insurer that requires testing of a proposed insured shall maintain records and establish procedures in a manner that protects the privacy of the proposed insured and the confidentiality of the test results.

(3)(A) The Commissioner of Insurance and Securities may, by rule, require an insurer to report numerical data regarding test results to the Commissioner for the limited purpose of performing epidemiological studies. The name, address, or other information that reveals the identity of the individual tested shall not be reported to the Commissioner of Insurance and Securities.

(B) An insurer shall report numerical data regarding test results to actuaries employed or consulted by the insurer for the limited purpose of

performing actuarial studies related to the business of insurance. The name, address, or other information that reveals the identity of the individual tested shall not be reported to the actuaries. (Aug. 7, 1986, D.C. Law 6-132, § 7, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(e), 36 DCR 471; Feb. 5, 1994, D.C. Law 10-68, § 30, 40 DCR 6311; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(g), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-228.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent” in (a) and at the end of (d)(3)(A); and substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” in (c) and near the beginning of (d)(3)(A).

**Legislative history of Law 6-132.** — See note to § 35-221.

**Legislative history of Law 7-208.** — See note to § 35-230.

**Legislative history of Law 10-68.** — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-201.

## § 35-227. Contestability.

An insurer may contest the validity of a policy or contract for 3 years from the date of issuance, amendment, or renewal of the policy or contract, if the basis for contesting the validity is that the insured knowingly failed or refused to disclose to the insurer that he or she had AIDS at the time of issuance, amendment, or renewal of any policy issued under this subchapter, and the insurance company was prohibited by law from conducting a test to determine the exposure of the insured to the AIDS virus on the date the insurer and insured entered into a contract. (Aug. 7, 1986, D.C. Law 6-132, § 8, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(f), 36 DCR 471.)

**Legislative history of Law 6-132.** — See note to § 35-221.

**Legislative history of Law 7-208.** — See note to § 35-230.

## § 35-228. Special enforcement provisions.

(a) An insurer, or an agent, broker or employee of the insurer who violates any provision of this subchapter or rule issued pursuant to this subchapter shall be subject to the suspension or revocation of its license or certificate of authority to transact business in the District, as appropriate, in accordance with the provisions of §§ 35-405, 35-426, 35-1506, and 35-1540, or other applicable District laws.

(b) Any person who violates the restrictions on disclosure in § 35-226(d) shall be fined not less than \$500 or more than \$5,000 for each disclosure. In the case of an insurer or an agent, broker or employee of an insurer, the fine shall be in addition to the penalties provided in subsection (a) of this section.

(c) Any person injured as the result of a violation of this subchapter, or a rule issued pursuant to this subchapter, may bring an action for civil damages and other appropriate relief in the Superior Court of the District of Columbia



without first pursuing administrative remedies. (Aug. 7, 1986, D.C. Law 6-132, § 9, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(g), 36 DCR 471.)

**Legislative history of Law 6-132.** — See note to § 35-221.

**Legislative history of Law 7-208.** — See note to § 35-230.

## § 35-229. Rules.

The Mayor shall issue proposed rules, within 90 days of August 7, 1986, to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council of the District of Columbia ("Council") for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not disapprove the proposed rules by resolution, within the 45-day review period, the proposed rules shall be deemed approved. The Council may approve or disapprove the proposed rules, in whole or in part, by resolution prior to the expiration of the 45-day review period. (Aug. 7, 1986, D.C. Law 6-132, § 10, 33 DCR 3615.)

**Legislative history of Law 6-132.** — See note to § 35-221.

## § 35-230. Prohibition against discrimination in use of AIDS tests.

(a) No insurer shall inquire about the sexual orientation of an applicant in an application for health, life, or disability income insurance coverage or in an investigation conducted by an insurer or insurance support organization on behalf of an insurer in connection with an application for the coverage.

(b) Sexual orientation shall not be used as a factor in the underwriting process or in the determination of insurability.

(c) Insurance support organizations shall be directed by insurers not to investigate, directly or indirectly, the sexual orientation of a proposed insured.

(d) An insurance company shall not use sexual orientation, lifestyle, living arrangements, occupation, gender, or beneficiary designation to determine whether to test an individual who applies for life, health, or disability income insurance. (Aug. 7, 1986, D.C. Law 6-132, § 11, as added Mar. 16, 1989, D.C. Law 7-208, § 2(h), 36 DCR 471.)

**Legislative history of Law 7-208.** — Law 7-208, the "Prohibition of Discrimination in the Provision of Insurance Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-364, which was referred to the Committee on Finance and Revenue. The Bill was

adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-279 and transmitted to both Houses of Congress for its review.



## CHAPTER 3. LIFE INSURANCE; DEFINITIONS.

Sec.

35-301. Short title; applicability of provisions.

35-302. Definitions.

### § 35-301. Short title; applicability of provisions.

Chapters 3 to 8 of this title shall be known as the "Life Insurance Act." All life insurance companies now or hereafter incorporated or formed by authority of any general or special law of this District or by other act of Congress, and all foreign and alien companies authorized to do business in this District, shall be subject to said chapters. (June 19, 1934, 48 Stat. 1127, ch. 672, ch. I, § 1; 1973 Ed., § 35-301.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to application of chapter to existing companies, see § 35-620.

**Association subject to chapter.** — The Navy Mutual Aid Association, formed to aid families of deceased members by providing a

substantial sum for their relief at as near actual net cost of insurance as possible, is subject to the provisions of chapters 3 to 8 of this title, but is not subject to the tax on insurance companies. *Fechteler v. Jordan*, 218 F.2d 865 (D.C. Cir. 1955).

### § 35-302. Definitions.

In chapters 3 to 8 of this title, unless the context otherwise requires:

- (1) "District" means the District of Columbia.
- (2) "Mayor" means the Mayor of the District of Columbia.
- (3) "Commissioner" means the Commissioner of Insurance and Securities of the District of Columbia, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan No. 5 of 1952.
- (4) "Department" means the Department of Insurance and Securities Regulation of the District of Columbia.
- (5) "Company" means any life insurance company and includes a corporation, company, or association of persons engaged in, or proposing to engage in, the business of life insurance.
- (6) "Domestic company" means an insurance company organized under the laws of the District, or formed or organized under an act of Congress.
- (7) "Foreign company" means an insurance company organized under the laws of any state of the United States, or of any territory or insular possession of the United States.
- (8) "Alien company" means a company organized under the laws of any country other than the United States or a territory or insular possession thereof.
- (9) "Person" includes individuals, corporations, associations, and partnerships; personal pronouns include all genders; the singular includes the plural, and the plural includes the singular.

(10) The term "general agent" in chapters 3 to 8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums, and/or issue policies in its behalf.

(11) The term “agent” in chapters 3 to 8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums in its behalf.

(12) The term “solicitor” in chapters 3 to 8 of this title shall include any individuals authorized in writing by a duly licensed agent to solicit risks and collect premiums in behalf of said agent.

(13) The terms “agent” and “solicitor” shall not include officers or salaried employees of any company, association, or exchange which is authorized to transact business in the District, who do not solicit, negotiate, or place risks.

(14) The term “broker” in chapters 3 to 8 of this title shall include consultant, surveyor and/or any person, partnership, association, or corporation who, for money, commission, or anything of value, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or taking out insurances, including surety bonds.

(15) “Net premium receipts” means gross premiums received less the sum of the following:

(A) Premiums returned on policies cancelled or not taken;

(B) Premiums paid for reinsurances where the same are paid to companies duly licensed to do business in the District; and

(C) Dividends paid in cash or used by policyholders in payment of renewal premiums or in purchase of paid-up additional insurance.

(16) “Surplus” means the excess of admitted assets over liabilities and capital, in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock.

(17) “Liabilities” means all debts, due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by chapters 3 to 8 of this title.

(18) “Industrial life insurance” means that form of life insurance, either: (A) Under which the premiums are payable weekly; or (B) under which the premiums are payable monthly or oftener; if the face amount of insurance provided in the policy is less than \$1,000, and the words “industrial policy” are plainly printed upon the policy as a part of the descriptive matter.

(19) “Admitted assets” includes the investments authorized or permitted pursuant to the National Association of Insurance Commissioners Accounting Practices and Procedures Manual. (June 19, 1934, 48 Stat. 1128, ch. 672, ch. I, § 2; July 16, 1953, 67 Stat. 172, ch. 196, § 2; 1973 Ed., § 35-302; Mar. 17, 1994, D.C. Law 10-76, § 2, 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 2, 41 DCR 1005; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(h), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-3701 and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” and substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” in (3).

**Legislative history of Law 10-76.** — Law 10-76, the “Insurance Omnibus Temporary Amendment Act of 1993,” was introduced in

Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the “Insurance Omnibus Amendment

Act of 1994," was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

**"Insurance agent" and "solicitor."** — "Insurance agent" and "solicitor" are not defined for District unemployment compensation purposes. *Gordon v. District Unemployment Comp. Bd.*, App. D.C., 402 A.2d 1251 (1979).



## CHAPTER 4. DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES.

Sec.

- 35-401. Department continued; personnel; performance of Commissioner's duties; seal; Commissioner's office and papers to be public; Commissioner's annual reports; out-of-state visits.
- 35-402. Collection of charges and fees.
- 35-403. Disposition of excess in fees, charges, or taxes.
- 35-404. Certificate of authority — Investigation of qualifications; effect; issuance.
- 35-405. Same — Revocation or suspension; grounds; hearing; alternative penalty.
- 35-406, 35-407. [Repealed].
- 35-408. Companies or agents not to make or publish false statements.
- 35-409. Representation of financial standing — All companies or agents.
- 35-410. Same — Alien companies; violations.
- 35-411. Defamatory or injurious false statements against companies.
- 35-412. Commissioner authorized to issue subpoenas; enforcement.
- 35-413. Enforcement of Commissioner's orders or actions.

Sec.

- 35-414. False statements in application for policy.
- 35-415. Deposit of securities by companies desiring to transact business — Amount; deposits outside District.
- 35-416. Same — Type of securities allowed; officials responsible for safekeeping; collection of income; substitution; decline in value.
- 35-417. Same — Withdrawal upon discontinuance of business or reinsurance.
- 35-418. [Repealed].
- 35-419 to 35-421. [Repealed].
- 35-422. Valuation of securities.
- 35-423. [Repealed].
- 35-424. Political contributions prohibited; immunity of witnesses in proceedings in regard to violations.
- 35-425 to 35-428. [Repealed].
- 35-429. Disposition of premiums paid to agents.
- 35-430. Contractual rights of minors.
- 35-431. Assessment companies prohibited.
- 35-432. Appeals from Commissioner to Mayor.

### § 35-401. Department continued; personnel; performance of Commissioner's duties; seal; Commissioner's office and papers to be public; Commissioner's annual reports; out-of-state visits.

(a) There shall be continued in the District a department charged with the execution of the laws relating to insurance, to be called the "Department of Insurance and Securities Regulation." At the head of such Department there shall be a Commissioner of Insurance and Securities, who shall devote his entire service to the Department. He shall be appointed by and hold his office at the pleasure of the Mayor. The Commissioner, during his term of office, shall not be interested in the business of any insurance company except as a policyholder. He shall take and subscribe an oath of office which shall be filed with the Mayor. In said Department there shall be also 2 Deputy Commissioners and such other personnel as may be necessary within appropriations annually made by Congress for said Department. The compensation of the Commissioner, Deputy Commissioners, and other personnel shall be fixed in accordance with the provisions of Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code.

(b) In case of the absence or inability of the Commissioner, or in the event of the removal of the Commissioner, and pending the appointment of his



successor, 1 of the Deputy Commissioners shall perform the duties of the Commissioner.

(c) The Mayor shall provide the Department with an official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear "Department of Insurance and Securities Regulation."

(d) Every certificate and other document or paper executed by such Commissioner, or his deputies, in pursuance of any authority conferred upon him by law and sealed with the seal of his office, and all copies of papers certified by him or by his deputies and authenticated by said seal, shall, in all cases, be evidence equally and in like manner as the original thereof and shall have the same force and effect as would the original in any suit or proceeding in any court of this District.

(e) The office of the Commissioner shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as it may be provided otherwise herein.

(f) The Commissioner shall report annually to the Mayor his official transactions, and shall include in such report abstracts of the annual statements of the several companies and an exhibit of the financial condition and business transactions of the same as shown by their annual statements. He shall also include therein a statement of the receipts and expenditures of the Department for the preceding year and such recommendations relative to insurance and the insurance laws of the District as he shall deem proper.

(g) The Commissioner is authorized to attend and participate in the meetings of the National Convention of Insurance Commissioners and of the committees thereof; he is also authorized to visit the insurance departments of the various states when in his judgment such visits are necessary for the proper conduct of his official office; and he may require such of his assistants as he may designate to attend and participate in such meetings, all subject to the prior approval of the Mayor. The actual expense of such attendance by the Commissioner and his assistants shall be paid in like manner as other expenses of the District are paid. (June 19, 1934, 48 Stat. 1129, ch. 672, ch. II, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); 1973 Ed., § 35-401; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to application of chapter to existing companies, see § 35-620.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance" and substituted "Commissioner" for "Superintendent" throughout the section; and substituted "Department of Insurance and Securities Regulation" for "Department of Insurance of the District of Columbia" in (a) and (c).

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and

Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department

of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

## § 35-402. Collection of charges and fees.

(a) All charges and fees provided for in this section shall be collected by the Commissioner and made payable to the District of Columbia.

(b) For filing charter or articles of incorporation or association, or deed of settlement or copy thereof, required by law, \$300; for each company certificate of authority, \$200, renewal fee, \$200; for license of each general agent, \$100, renewal fee, \$100; for license of each agent, or solicitor, \$50, renewal fee \$50; for license of each broker, \$100, renewal fee, \$100. For each appointment fee for each agent, general agent, or each solicitor, \$25 fee, \$25 renewal fee; provided, however, that beginning October 1, 1994, the license and renewal fee of each general agent, agent or solicitor, and broker shall be payable biennially in accordance with the rulemaking procedures in section 3(a)(2).

(c) The Mayor may amend all fees referred to in this chapter by rulemaking pursuant to subchapter I of Chapter 15 of Title 1. (June 19, 1934, 48 Stat. 1130, ch. 672, ch. II, § 2; 1973 Ed., § 35-402; Feb. 23, 1980, D.C. Law 3-52, § 2, 27 DCR 26; June 14, 1994, D.C. Law 10-128, § 401, 41 DCR 2096; Sept. 8, 1995, D.C. Law 11-36, § 10, 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 10, 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to licensing of agents, see §§ 35-425 and 35-426.

As to licensing of brokers, see § 35-428.

As to taxation and fiscal affairs of insurance companies, see § 47-2601 et seq.

**Effect of amendments.** — D.C. Law 11-90, in (b), inserted “general agent” following “For

each appointment fee for each agent” near the beginning of the second sentence, and deleted the former last two sentences.

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a).

**Temporary amendment of section.** — D.C. Law 11-36, in (b), inserted “general agent” following “For each appointment fee for each agent” near the beginning of the second sen-

tence, and deleted the former last two sentences.

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 11 of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 10 of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 3-52.** — Law 3-52, the "District of Columbia Insurance Act Amendment of 1979," was introduced in Council and assigned Bill No. 3-53, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 20, 1979, and December 4, 1979, respectively. Signed by the Mayor on December 21, 1979, it was assigned Act No. 3-142 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-128.** — Law 10-128, the "Omnibus Budget Support Act of 1994," was introduced in Council and assigned Bill No. 10-575, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 22, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 14, 1994, it was assigned Act

No. 10-225 and transmitted to both Houses of Congress for its review. D.C. Law 10-128 became effective on June 14, 1994.

**Legislative history of Law 11-36.** — Law 11-36, the "Insurance Omnibus Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-181, which was retained by council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the "Insurance Omnibus Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**References in text.** — "Section 3(a)(2)," referred to in (b), is § 3(a)(2) of chapter II of the Life Insurance Act, approved June 19, 1934, Pub. L. 73-436, 48 Stat. 1130, ch. 672.

**Department of Insurance abolished.** — See note to § 35-401.

## § 35-403. Disposition of excess in fees, charges, or taxes.

Whenever it appears to the satisfaction of the Commissioner that, because of some error, mistake, or erroneous interpretation of a statute, a company has paid fees, charges, or taxes in excess of the amount legally chargeable against it, the Commissioner shall, on application of the company, present the matter to the Mayor, with the view of refunding to such company any such excess, or applying the excess or portion thereof toward the payment of fees, charges, or taxes already due from such company. (June 19, 1934, 48 Stat. 1131, ch. 672, ch. II, § 4; 1973 Ed., § 35-403; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to tax refunds, see §§ 47-1317 and 47-1318.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of



Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-401.

## § 35-404. Certificate of authority — Investigation of qualifications; effect; issuance.

It shall be the duty of the Commissioner to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The Commissioner may, however, satisfy himself by such investigation as he may deem proper or necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the Commissioner, authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the 30th day of April next succeeding the date of its issuance. No company shall transact any business of insurance in or from the District until it shall have received a certificate of authority as authorized by this section, and no company shall transact any business of insurance not specified in such certificate of authority. (June 19, 1934, 48 Stat. 1131, ch. 672, ch. II, § 5; Feb. 22, 1958, 72 Stat. 19, Pub. L. 85-334, § 1; 1973 Ed., § 35-404; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Cross references.** — As to revocation of certificates of authority, see § 35-405.

As to authority of the Council to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in § 35-3001.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

**Single insurer may do both life and casualty insurance business.** — The Life Insurance Act and the Fire and Casualty Act do not prohibit the issuance of a certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Travelers Ins. Co. v. Jordan*, 287 F.2d 347 (D.C. Cir. 1961).

An insurer who seeks licenses under the Life Insurance Act and the Fire and Casualty Act bears the responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if 2 certificates are issued, each must stand on its own feet. *Travelers Ins. Co. v. Jordan*, 287 F.2d 347 (D.C. Cir. 1961).

**Association not engaged in insurance.** — An association not engaged in insurance is not required to obtain certificate of authority from the Superintendent of Insurance (now Commissioner of Insurance and Securities). *Metropolitan Police Retiring Ass'n v. Tobriner*, 306 F.2d 775 (D.C. Cir. 1962).

**Commissioner lacks authority to hold hearing on renewal.** — This section does not authorize the Superintendent (now Commissioner) to hold a hearing, and the grant of a hearing by him on the question of the renewal of a certificate was gratuitous. *Jordan v. United Ins. Co. of Am.*, 289 F.2d 778 (D.C. Cir. 1961).



**§ 35-405. Same — Revocation or suspension; grounds; hearing; alternative penalty.**

(a) The Commissioner shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of chapters 3 to 8 of this title, or which:

- (1) Is impaired in capital or surplus;
- (2) Is insolvent;
- (3) Is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors or to the public;
- (4) Has refused or neglected to pay a valid final judgment against such company within 30 days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;
- (5) Has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;
- (6) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Commissioner, his Deputies, or duly appointed examiners;
- (7) Has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;
- (8) Fails to file with the Commissioner a copy of an amendment to its charter or articles of association within 30 days after the effective date of such amendment;
- (9) Has had its corporate existence dissolved or its certificate of authority revoked in the state in which it was organized;
- (10) Has had all its risks reinsured in their entirety in another company, without prior approval of the Commissioner; or
- (11) Has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

(b) The Commissioner shall not revoke or suspend the certificate of authority of any company until he has given the company not less than 30 days notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing; provided, that if the Commissioner shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required; provided further, that in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section, after hearing as herein provided, the Commissioner may subject such company to a penalty of not more than \$10,000 for any violation or not more than \$25,000 for intentional violations,

when in his judgment he finds that the public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the Office of the Commissioner to the Collector of Taxes of the District of Columbia. At any hearing provided by this section, the Commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. (June 19, 1934, 48 Stat. 1131, ch. 672, ch. II, § 6; May 4, 1950, 64 Stat. 103, ch. 157, § 1; Feb. 22, 1958, 72 Stat. 20, Pub. L. 85-334, § 2; 1973 Ed., § 35-405; Mar. 14, 1985, D.C. Law 5-160, § 3(a), 32 DCR 39; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Cross references.** — As to administrative procedure, see § 1-1501 et seq.

**Section references.** — This section is referred to in §§ 35-228, 35-1011, 35-3603, and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 5-160.** — Law 5-160, the "Life Insurance Amendments Reform Act of 1984," was introduced in Council and assigned Bill No. 5-471, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-225 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished

the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

**Evidence sufficient to support revocation.** — Evidence was insufficient to support finding of Superintendent (now Commissioner) to revoke certificate of authority. *Union Fid. Life Ins. Co. v. District of Columbia Dep't of Ins.*, App. D.C., 295 A.2d 62 (1972).

**§§ 35-406, 35-407. Same — Companies required to file; failure to file; publication of summary; annual financial statement — Forms to be furnished by Superintendent.**

Repealed. Oct. 21, 1993, D.C. Law 10-42, § 7(b), 40 DCR 6020.

**Legislative history of Law 10-42.** — Law 10-42, the “Required Annual Financial Statements and Participation in the NAIC Insurance Regulatory Information System Act of 1993,” was introduced in Council and assigned Bill No. 10-129, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-77 and transmitted to both Houses of Congress for its review. D.C.

Law 10-42 became effective on October 21, 1993.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Editor’s notes.** — Section 10(i) of D.C. Law 11- (Act 11-524) purported to amend former §§ 35-406 and 35-407 by substituting “Commissioner” “Commissioner of Insurance and Securities” and “Department of Insurance and Securities Regulation” for “Superintendent of Insurance” and “Department of Insurance of the District of Columbia” respectively.

## § 35-408. Companies or agents not to make or publish false statements.

A director, officer, agent, or employee of any company who willfully and knowingly subscribes, makes, or concurs in making or publishing any annual or other statement required by law, containing any material statement which is false, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not less than 2 nor more than 10 years. A person who willfully and knowingly makes oath to any such false statement shall be guilty of perjury. (June 19, 1934, 48 Stat. 1132, ch. 672, ch. II, § 9; 1973 Ed., § 35-408.)

**Section references.** — This section is referred to in § 35-4703.

## § 35-409. Representation of financial standing — All companies or agents.

No company doing business in the District, or agent thereof, shall state or represent by advertisement in any newspaper, periodical, or magazine, or by any sign, circular, card, policy of insurance, or certificate of renewal thereof or otherwise that any funds or assets are in possession of such company which are not actually possessed by it and available for the payment of losses and claims and held for the protection of its policyholders and creditors. (June 19, 1934, 48 Stat. 1132, ch. 672, ch. II, § 10; 1973 Ed., § 35-409.)

**Cross references.** — As to penalties for violation of section, see § 35-410.

As to taxation and fiscal affairs of insurance companies, see § 47-2601 et seq.

**Section references.** — This section is referred to in §§ 35-410 and 35-4703.

## § 35-410. Same — Alien companies; violations.

(a) Every advertisement or public announcement and every sign, circular, or card issued by an alien company doing business in the District, representing its financial standing, shall exhibit as capital stock and assets only the capital stock and assets held by its United States branch, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made by such company to the Commissioner; provided, however, that this section shall not be deemed to prevent an alien company from furnishing to its policyholders



in the District of Columbia its annual report to policyholders of its domicile. This subsection shall not apply to an alien company which maintains in the United States, as required by law, assets held in trust for the benefit of the United States policyholders in an amount not less than the sum of its required capital deposit and the amount of its outstanding liabilities arising out of its insurance transactions in the United States.

(b) Any violation of this section or § 35-409 shall be a misdemeanor, and any person convicted of such violation shall, for the 1st offense, be liable to a fine of not more than \$500, and for each subsequent offense shall be liable to a fine of not more than \$1,000. (June 19, 1934, 48 Stat. 1132, ch. 672, ch. II, § 11; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88-193, § 2; Sept. 7, 1966, 80 Stat. 705, Pub. L. 89-559, § 1; Aug. 8, 1968, 82 Stat. 662, Pub. L. 90-467; 1973 Ed., § 35-410; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

## § 35-411. Defamatory or injurious false statements against companies.

It shall be unlawful for any company now or hereafter doing business in the District, or any officer, director, clerk, employee, general agent, agent, or solicitor thereof, broker or any other person, to make, verbally or otherwise, publish, print, distribute, or circulate, or cause the same to be done, or in any way to aid, abet, or encourage the making, printing, publishing, distributing, or circulating of, any pamphlet, circular, article, literature, or statement of any kind which is defamatory of any company now or hereafter doing business in the District, or which contains any false criticism or false statement calculated to injure such company in its reputation or business; and any officer, director, clerk, employee, general agent, agent, or solicitor of any company, broker or any other person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100. (June 19, 1934, 48 Stat. 1133, ch. 672, ch. II, § 12; 1973 Ed., § 35-411.)

**Section references.** — This section is referred to in § 35-4703.

## § 35-412. Commissioner authorized to issue subpoenas; enforcement.

(a) In the examination of any company as provided for in chapters 3 to 8 of this title, the Commissioner shall have power to issue subpoenas in the name of the Chief Judge of the Superior Court of the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers, or documents before said Commissioner.

(b) If any witness having been personally summoned shall neglect or refuse to obey the subpoena issued as herein provided, then and in that event the Commissioner may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said Court, or any judge thereof, hereby is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that Court. (June 19, 1934, 48 Stat. 1133, ch. 672, ch. II, § 13; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 62 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(37)(A); 1973 Ed., § 35-412; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

### § 35-413. Enforcement of Commissioner's orders or actions.

The Commissioner may, through the Corporation Counsel of the District, invoke the aid of any court of competent jurisdiction to enforce any order made or action taken by him in pursuance of law. (June 19, 1934, 48 Stat. 1133, ch. 672, ch. II, § 14; 1973 Ed., § 35-413; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

### § 35-414. False statements in application for policy.

The falsity of a statement in the application for any policy of insurance shall not bar the right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the company. (June 19, 1934, 48 Stat. 1133, ch. 672, ch. II, § 15; 1973 Ed., § 35-414.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to form and contents of insurance contracts, see §§ 35-503 and 35-517.

As to special provisions governing industrial policies, see § 35-901 et seq.

**Intent of section.** — This section is intended to prevent innocent and immaterial misrepresentations in an application from voiding insurance. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943).

**Policy provision broader than this section is invalid.** — The purpose of this section regarding effect of false statement in application for insurance is to nullify contractual provisions contrary to its terms, and therefore a so-called condition precedent is invalid to extent that it is more broadly effective than this section allows. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943).

The effect of this section cannot be escaped by the device of contracting to the contrary or labeling a contractual attempt to do so a condi-

tion to the attaching of the risk. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943).

**Requirements for voiding policy.** — To void a life policy under this section, the statement must be both false and made with intent to deceive or material to risk or its acceptance, unless possibly both intent to deceive and materiality are required in addition to falsity. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943).

Proof that an application for insurance contains a false statement which materially affects the acceptance of risk or hazard assumed is sufficient to defeat a claim under the policy. *Hill v. Prudential Ins. Co.*, App. D.C., 315 A.2d 146 (1974).

An applicant's affirmative false statement concerning a material matter in an application for insurance constitutes a sufficient ground for voiding the policy, and an insurer seeking to cancel a policy must prove, by a preponderance of clear and satisfactory evidence, that the statement was, in fact, false. The insurer must also prove that the untrue statement was material, either by showing that it affected the insurer's risk of loss in issuing the policy, or that the statement was made with intent to deceive. *National Union Fire Ins. Co. v. Mason, Perrin & Kanovsky*, 765 F. Supp. 15 (D.D.C. 1991).

**False statement with reference to material matter.** — To void a life insurance policy on the ground of false representation, the statement must not only have been untrue, but it must have been with reference to a material matter. *Kaplan v. Manhattan Life Ins. Co.*, 109 F.2d 463 (D.C. Cir. 1940).

**False statements on life insurance application bar recovery under policy regardless of cause of death.** — Decedent's false statements on an application for life insurance that he did not regularly or currently use marijuana were made with an intent to deceive insurer into issuing policy on decedent's life and materially affected insurer's acceptance of risk barring recovery on the policy; it is immaterial that the decedent did not die from the use of marijuana. *Johnson v. Prudential Ins. Co. of Am.*, 589 F. Supp. 30 (D.D.C. 1983), aff'd, 744 F.2d 878 (D.C. Cir. 1984).

When the insurance company asked "to the best of your knowledge and belief, have you had any departures from good health," the insurance company placed the resolution of that question into the subjective framework of the applicant's understanding and belief but what the applicant believed to be true is the determining factor in judging the truth or falsity of his answer only insofar as that belief is not clearly contradicted by the factual knowledge

on which it is based. A court may properly find a statement false as a matter of law, however sincerely it may be believed. *Skinner v. Aetna Life & Cas.*, 804 F.2d 148 (D.C. Cir. 1986).

**Intent to deceive not necessary.** — To void the policy, the insurer is not required to show that applicant's false statement, which was conceded to materially affect the risk assumed, was made with the intent to deceive. *Hill v. Prudential Ins. Co.*, App. D.C., 315 A.2d 146 (1974).

Summary judgment in favor of the insurer was proper because, even if unintentional, misrepresentations as to the insured's cirrhosis of the liver without doubt materially affected the hazard assumed by the company and its decision to accept the risk. *Blair v. Inter-Ocean Ins. Co.*, 589 F.2d 730 (D.C. Cir. 1978).

Where insured provided false statements concerning her medical history on her application for insurance, whether her intent was deceptive or not was immaterial since the false statements were material and had the truth been known the policy would not have been issued. *Hood v. Prudential Ins. Co. of Am.*, 758 F. Supp. 764 (D.D.C. 1991).

**"Material" construed.** — For a misstatement in an application for a life policy to be material to the hazard assumed within the meaning of this section, it must be shown in some way to have affected the hazard assumed or contributed to the loss in a substantial manner. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943); *Haubner v. Aetna Life Ins. Co.*, App. D.C., 256 A.2d 414 (1969).

A misrepresentation that influences an insurer to assume a risk which it otherwise would not have underwritten inevitably is material. *Jones v. Prudential Ins. Co. of Am.*, App. D.C., 388 A.2d 476 (1978).

**Test of materiality.** — Test of materiality of a statement in an insurance application is whether the representation would reasonably influence the insurer's decision as to whether it should insure. *Jannenga v. Nationwide Life Ins. Co.*, 288 F.2d 169 (D.C. Cir. 1961).

**Causal relationship between misrepresentation and death.** — There need be no causal relationship between misrepresented matter and death of insured where the misrepresentation would have affected the company's acceptance of the risk or where it was made with intent to deceive. *Jones v. Prudential Ins. Co. of Am.*, App. D.C., 388 A.2d 476 (1978).

Material false statements need not be related to the cause of death in order to void the policy. *Hood v. Prudential Ins. Co. of Am.*, 758 F. Supp. 764 (D.D.C. 1991).

**Burden of proof of elements of section.** — Where the insurer charged that the insured falsely denied the existence of prior medical



conditions in his application, to void the life policy for material misrepresentation on account of insured's statements, the insurer has the burden of proving one or more of them false. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943).

The insurer has the burden of proof as to the elements indicated in order to void a life policy. *Metropolitan Life Ins. Co. v. Adams*, App. D.C., 37 A.2d 345 (1944).

**Statements held false representations.** — Insured's statement held to be false representation, preventing recovery on policy. *Metropolitan Life Ins. Co. v. Adams*, App. D.C., 37 A.2d 345 (1944); *Jannenga v. Nationwide Life Ins. Co.*, 288 F.2d 169 (D.C. Cir. 1961); *Haubner v. Aetna Life Ins. Co.*, App. D.C., 256 A.2d 414 (1969); *Westhoven v. New England Mut. Life Ins. Co.*, App. D.C., 384 A.2d 36 (1978); *Jones v. Prudential Ins. Co. of Am.*, App. D.C., 388 A.2d 476 (1978).

**Erroneous statement held not to void policy.** — An erroneous statement in an application for change of beneficiary which does not relate to a material matter and is not made with intent to deceive, does not void a life policy. *Carter v. Provident Ins. Co.*, 122 F.2d 960 (D.C. Cir. 1941).

**Application signed in blank.** — An insurer could not successfully interpose a defense of misstatement of material medical facts where the applicant, at the request of the insurer's agent, signed the application form in blank, and the applicant orally gave truthful and full answers to the questions on the application form as they were propounded by the agent. *Blair v. Prudential Ins. Co. of Am.*, 472 F.2d 1356 (D.C. Cir. 1972).

**Duty of insured to read application.** — Insured has duty to read policy application which he signs, or, if necessary, to have it read to him and to report any misrepresentation or omissions to the insurer. He is held to know the contents of his application and is bound thereby, regardless of whether he has actual knowledge of such at time he signed the form. *Metropolitan Life Ins. Co. v. Johnson*, App. D.C., 363 A.2d 984 (1976).

**Notice of ground of forfeiture.** — Where insured's wife informed insurer's representative of a prior hospitalization of insured not disclosed by the application for life policy, in determining the question of waiver by insurer, the representative's knowledge was to be considered notice to the insurer. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943).

**Waiver of forfeiture.** — Where the insurer's representative having authority to solicit risks and collect premiums was informed of a prior hospitalization of insured not disclosed by the application, and thereafter premiums were accepted and the insurer and representative stood idle for nearly a month until insured's death, there was a waiver, precluding the insurer from avoiding liability because of the insured's failure to disclose the hospitalization. *Prudential Ins. Co. of Am. v. Saxe*, 134 F.2d 16 (D.C. Cir.), cert. denied, 319 U.S. 745, 63 S. Ct. 1033, 87 L. Ed. 1701 (1943).

**Cited in** *Kaitlin v. Metropolitan Life Ins. Co.*, App. D.C., 65 A.2d 188 (1949); *Manufacturers Life Ins. Co. v. Capitol Datsun, Inc.*, 566 F.2d 354 (D.C. Cir. 1977); *Bias v. Advantage Int'l, Inc.*, 905 F.2d 1558 (D.C. Cir.), cert. denied, 498 U.S. 958, 111 S. Ct. 387, 112 L. Ed. 2d 397 (1990).

## § 35-415. Deposit of securities by companies desiring to transact business — Amount; deposits outside District.

(a) Every company desiring to transact business in the District shall, as a prerequisite to the issuance of a certificate of authority, deposit, as herein provided, approved securities of not less than \$100,000 market value. In the case of domestic companies, such deposit shall be made in the District as prescribed under § 35-416; provided, that the deposit of every domestic company heretofore organized under the provisions of the laws of the District or other act of Congress may, in the discretion of the Commissioner, be limited: (1) for stock companies, to an amount equal to the capital stock outstanding on June 19, 1934; and (2) for nonstock companies, to such amount as in the opinion of the Commissioner would be required from stock companies of comparable size. In no case shall the deposit of a domestic company be less than \$25,000 in value. In the case of foreign or alien companies, the deposit may be made as provided under § 35-416, or may be made with the supervis-

ing official of any state, territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders.

(b) In the case of a deposit made with an official outside the District, a certificate of deposit from said official shall be filed with the Commissioner, showing the character of the deposit, before a certificate of authority to transact business in the District may be issued, and, if the securities so deposited are not of the class authorized by chapters 3 to 8 of this title for investments of companies, the Commissioner may require an additional deposit in approved securities. (June 19, 1934, 48 Stat. 1133, ch. 672, ch. II, § 16; May 20, 1940, 54 Stat. 217, ch. 204; 1973 Ed., § 35-415; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to reserves, see § 35-201.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

## § 35-416. Same — Type of securities allowed; officials responsible for safekeeping; collection of income; substitution; decline in value.

(a) When any company is required by chapters 3 to 8 of this title to make a deposit in the District, such deposit shall be in securities of the class authorized by chapters 3 to 8 of this title for investments of companies, and shall be delivered by the company to the Executive Secretary of the District and the Auditor of the District, who shall receive and hold the same subject to the lawful orders of the Commissioner, and who shall be responsible for the safekeeping of all securities deposited or delivered under the authority of this section. The company shall have the right to collect the income on deposited securities so long as it continues solvent and complies with the laws of the United States and of the District, and it shall have the right to substitute for such securities other securities, provided such substituted securities are of the character, amount, and value required by this section, and are approved by the Commissioner; provided, that not less than \$25,000 of such deposit shall at all times consist of bonds or other evidences of indebtedness of the United States or of any state of the United States, or of any county or incorporated city of any state of the United States, and that securities of a class different from such bonds or other evidences of indebtedness shall not in any case be accepted for deposit except with the specific approval of and at values determined by the Commissioner.

(b) If the value of securities deposited by any company shall decline, the Commissioner may require the company to make a further deposit, in order that the amount and value of the deposit required by chapters 3 to 8 of this title shall at all times be maintained. (June 19, 1934, 48 Stat. 1134, ch. 672, ch. II, § 17; May 20, 1940, 54 Stat. 217, ch. 204; 1973 Ed., § 35-416; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)



**Cross references.** — As to reserves, see § 35-201.

As to investments permitted, see § 35-634.

**Section references.** — This section is referred to in §§ 35-415 and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Office of Secretary to Board of Commissioners abolished.** — The Office of the Secretary to the Board of Commissioners of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners by Reorganization Plan No. 5 of 1952. Reorganization Order No. 41 of the Board of Commissioners, dated June 23, 1953, issued pursuant to that Plan, established as part of the Executive Office of the Board of Commissioners, under the direction and control of the Board, an Office of the Secretary to the Board of Commissioners to perform ministerial duties for the Board. The Order described the purpose and functions of the Office of Secretary, and provided that the functions and positions of the previously existing Office of the Secretary to the Board be transferred to the new Office, and that the previously existing Office of the Secretary be abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 2 of the Commissioner, dated December 13, 1967, as amended, established within the Executive Office of the Commissioner a Secretariat headed by an Executive Secretary. The Order transferred to the Secretariat certain functions, including the duties, powers, and authorities of all officers and employees performing such functions and assigned to the Office of the Secretary as it existed immediately prior to December 13, 1967, and revoked all other orders inconsistent therewith.

**Office of Auditor abolished.** — The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Auditor including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 19, dated November 10, 1952, established in the Department of General Administration an Internal Audit Office headed by an Internal Office Auditor. The executive functions of the Board of Commissioners were transferred to the Com-

missioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Orders No. 3 and 19 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Parts III and IVB of the latter Order established, within the newly created Department of General Administration, an Internal Audit Office headed by an Internal Audit Officer and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by paragraph 4 of Commissioner's Order No. 69-96, dated March 7, 1969. Part IVB of Organization Order No. 3 and that portion of paragraph 4 of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue, were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. Organization Order No. 50, dated December 31, 1974, established the Office of Budget and Management Systems, and transferred to that Office the functions of the Office of Municipal Audit and Inspection. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Revenue Development.

**Department of Insurance abolished.** — See note to § 35-401.

**Transfer of functions.** — Reorganization Order No. 23, dated December 30, 1952, transferred the functions relating to the delivery of securities required to be deposited by insurance companies transacting business in the District of Columbia from the Secretary of the Board of Commissioners and the Auditor of the District to the Internal Audit Officer or his deputy and the Disbursing Officer or his deputy, Department of General Administration. The Disbursing Office was established in the Finance Office of the Department of General Administration by Reorganization Order No. 20, dated November 10, 1952. Reorganization Order No. 20 was superseded by Organization Order No. 121, dated December 12, 1957, which placed disbursing functions in the Treasury Division of the Office of the Finance Officer. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 23, 1967, under Part IVC of which disbursing functions were continued in the Treasury Division of the Finance Office. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.



## § 35-417. Same — Withdrawal upon discontinuance of business or reinsurance.

(a) When a company determines to discontinue its business or to cease to do business in the District and desires to withdraw its deposit made in the District pursuant to chapters 3 to 8 of this title the Commissioner shall, upon the application of the company, and at its expense, give notice of such intention in a newspaper of general circulation in the District once a week for 3 consecutive weeks. After such publication he shall deliver to such company or its assigns the securities so deposited when he is satisfied upon examination and investigation made by him or under his authority and upon the oaths of the president and secretary or other chief officers of the company that all debts and liabilities of every kind due and to become due which the deposit was made to secure are paid and extinguished; provided, that the Commissioner may require any company so withdrawing from the District to furnish bond to cover any undisclosed or contingent liabilities.

(b) Upon a company being wholly reinsured the Commissioner may deliver to it or to its assigns all securities deposited by it upon compliance with the following condition: The reinsuring company shall assume and agree to discharge all liabilities of every kind due and to become due which the deposit of the reinsured company was made to secure. Such reinsuring company shall have a deposit in the District or with some state official in the United States in securities recognized by this law as lawful investments of the company in an amount and value not less than the deposit required of the reinsured company. The deposit of the reinsuring company shall be such that it will subsist for the security of the obligations of the reinsured company assumed by the reinsuring company. The Commissioner shall give notice of such reinsurance agreement and of the application for the deposit once a week for 3 consecutive weeks in a newspaper of general circulation in the District before the delivery of such securities to the reinsuring company. (June 19, 1934, 48 Stat. 1134, ch. 672, ch. II, § 18; 1973 Ed., § 35-417; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to reserves, see § 35-201.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

## § 35-418. Examinations; reports; expenses.

Repealed. Oct. 21, 1993, D.C. Law 10-49, § 9(b), 40 DCR 6110.

**Legislative history of Law 10-49.** — Law 10-49, the "Law on Examinations Act of 1993," was introduced in Council and assigned Bill No. 10-131, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings

on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-94 and transmitted to both Houses of Congress for its review. D.C. Law 10-49 became effective on October 21, 1993.

**§§ 35-419 to 35-421. Superintendent authorized to take over companies; grounds; procedure; liquidation; special agents and employees; rules and regulations; reports and bonds; companies deemed insolvent; reinsurance by Superintendent.**

Repealed. Oct. 15, 1993, D.C. Law 10-35, § 59(a), 40 DCR 5773.

**Legislative history of Law 10-35.** — Law 10-35, the “Insurers Rehabilitation and Liquidation Act of 1993,” was introduced in Council and assigned Bill No. 10-123, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-68 and transmitted to both Houses of Congress for its review. D.C. Law 10-35 became effective on October 15, 1993.

**Legislative history of Law 10-76.** — Law 10-76, the “Insurance Omnibus Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17,

1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the “Insurance Omnibus Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Editor’s notes.** — D.C. Law 10-76 and D.C. Law 10-103 purported to amend former § 35-419 by rewriting (a)(4).

**§ 35-422. Valuation of securities.**

All bonds or other evidences of debt having a fixed term and rate held by any company authorized to do business in the District, if amply secured and if not in default as to principal or interest, shall be valued as follows: (1) if purchased at par, at the par value; and (2) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made; provided, that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; provided further, that the Commissioner shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding; and provided further, that any such company may return such bonds or other evidences of debt at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule. (June 19, 1934, 48 Stat. 1137, ch. 672, ch. II, § 23; 1973 Ed., § 35-422; 1997 D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to investments permitted, see §§ 35-416 and 35-634.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Department of Insurance abolished.** — See note to § 35-401.

### § 35-423. Service of process; appointment of Superintendent as attorney of companies; violations.

Repealed. Mar. 21, 1995, D.C. Law 10-233, § 12, 42 DCR 24.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

### § 35-424. Political contributions prohibited; immunity of witnesses in proceedings in regard to violations.

(a) No company doing business in the District shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization, or for or in aid of any corporation, joint-stock, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney, or agent of any company which violates any of the provisions of this section, who participates in, aids, abets, or advises, or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than 1 year and a fine of not more than \$1,000, and any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company for the amount so contributed.

(b) No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury; provided further, that the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1138, ch. 672, ch. II, § 25; 1973 Ed., § 35-424.)

**Section references.** — This section is referred to in § 35-4703.



**§§ 35-425 to 35-428. General agents, agents, or solicitors; issuance, expiration and renewal of required license; exceptions; termination of employment; information provided Superintendent deemed privileged; suspension or revocation of licenses; grounds; hearing and appeal; alternative penalty; judicial appeals from rulings of Superintendent; procedure; liability of Superintendent in proceedings; brokers; issuance, revocation and renewal of required license; violations.**

Repealed. April 9, 1997, D.C. Law 11-227, § 16, 44 DCR 140.

**Cross references.** — As to administrative procedure, see § 1-1501 et seq.

As to license fees, see § 35-402.

As to brokers, see § 35-428.

As to life insurance agents, see §§ 35-425 and 35-426.

As to revocation or suspension of licenses, see § 35-426.

As to insurance agents other than life, see §§ 35-1301 and 35-1302.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Legislative history of Law 11-227.** — Law 11-227, the “Insurance Agents and Brokers Licensing Revision Act of 1996,” was introduced in Council and assigned Bill No. 11-, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on

first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-455 and transmitted to both Houses of Congress for its review. D.C. Law 11-227 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Editor’s notes.** — Former §§ 35-425 through 35-428 were also amended by § 10(i) of D.C. Law 11- (Act 11-524), projected to become law on May 22, 1997. The amendment by D.C. Law 11- (Act 11-524) amended former §§ 35-425 through 35-428 by substituting “Commissioner” “Commissioner of Insurance and Securities” and “Department of Insurance and Securities Regulation” for “Superintendent of Insurance” and “Department of Insurance of the District of Columbia”, respectively, wherever those terms appeared in the sections.

## **§ 35-429. Disposition of premiums paid to agents.**

An insurance agent, solicitor, or broker who acts in negotiating or renewing or continuing a contract of insurance for a company lawfully doing business in the District, and who receives any money or substitute for money as a premium for such a contract from the insured, whether he shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. If he fails to pay the same over to the company after written demand made upon him therefor, such failure shall be prima facie evidence that he has used or applied the said premium for a purpose other than paying the same over to the company, and upon conviction thereof he shall be deemed guilty of theft and punished accordingly. (June 19, 1934, 48 Stat. 1142, ch. 672, ch. II, § 30; 1973 Ed., § 35-429; Aug. 2, 1983, D.C. Law 5-24, § 15, 30 DCR 3341.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 5-24.** — Law

5-24, the “Technical and Clarifying Amendments Act of 1986,” was introduced in Council and assigned Bill No. 5-169, which was referred

to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively.

Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

## § 35-430. Contractual rights of minors.

Any minor of the age of 15 years or more may, notwithstanding such minority, contract for life, health, and accident insurance on his own life for his or her own benefit or for the benefit of his father, mother, husband, wife, child, brother, sister, or for the benefit of any person who has the care or custody of said minor or with whom said minor makes his or her home, and may exercise all such contractual rights with respect to any such contract of insurance as might be exercised by a person of full legal age and may at any time surrender his or her interest in any such insurance or give a valid discharge for any benefit accruing or money payable thereunder. (June 19, 1934, 48 Stat. 1142, ch. 672, ch. II, § 31; 1973 Ed., § 35-430.)

**Section references.** — This section is referred to in § 35-4703.

## § 35-431. Assessment companies prohibited.

Any company which makes insurance or reinsurance the performance of which is not guaranteed by the reserves required by chapters 3 to 8 of this title, but is contingent upon the payment of assessments or calls made upon its members, shall not be formed, admitted, or licensed in the District. (June 19, 1934, 48 Stat. 1142, ch. 672, ch. II, § 32; May 4, 1950, 64 Stat. 104, ch. 157, § 3; 1973 Ed., § 35-431.)

**Section references.** — This section is referred to in § 35-4703.

## § 35-432. Appeals from Commissioner to Mayor.

Any appeals to the Mayor from rulings of the Commissioner shall be perfected and filed with the Mayor within 20 days exclusive of Sundays and legal holidays from the date such rulings are communicated to the party at interest. (June 19, 1934, 48 Stat. 1142, ch. 672, ch. II, § 33; 1973 Ed., § 35-432; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(i), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-3006, 35-3604, and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-401.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-401.



## CHAPTER 5. PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES.

Sec.	Sec.
35-501. Valuation of reserves by Commissioner.	35-519. Same — Misrepresentations.
35-502. Companies issuing both participating and nonparticipating policies.	35-520. Same — Discriminations.
35-503. Life policies — Required provisions.	35-521. Rights of parties under life policies.
35-504. Same — Prohibited provisions.	35-522. Exemption from legal process — Disability benefits.
35-505. Annuity and pure endowment contracts; forms to be filed and approved; required provisions; applications, riders and endorsements.	35-523. Same — Group life policy or proceeds.
35-506. Nonforfeiture benefits and cash surrender values.	35-524. Fraudulent statements or representations against companies.
35-507. Standard nonforfeiture law — In general.	35-525. Authority to hold proceeds under trust or agreement.
35-508. Same — Individual deferred annuities.	35-526. Calculations of premiums and reserves.
35-509. Loan provisions in policies.	35-527. Acceptance and recordation of premiums on industrial life or sick-benefit policies.
35-510. Extension of time for payment of premiums.	35-528. Industrial life policies — Required provisions.
35-511. Ascertainment of loan indebtedness.	35-529. Same — Prohibited provisions.
35-512. Filing and approval of life policy forms.	35-530. Access to psychologists or optometrists under group health insurance policy.
35-513. Policy provisions required by foreign government entities.	35-531. Policy language simplification standards.
35-514. Group policies — General requirements.	35-532. Commissioner's review of test.
35-515. Same — Required provisions.	35-533. Applicability of §§ 35-531 through 35-536.
35-516. Same — Right to, and notice of, issuance of individual policy.	35-534. Regulations.
35-517. Individual accident and sickness policies.	35-535. Construction of §§ 35-531 through 35-536.
35-518. Prohibited activities — Securities operations.	35-536. Operative dates of §§ 35-531 through 35-536.

## § 35-501. Valuation of reserves by Commissioner.

(a)(1) The Commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in the District, except that in the case of an alien company such valuation shall be limited to its insurance transactions in the United States, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. All such valuations made by him or by his authority shall be made upon the net premium basis. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Commissioner when such certificate states the valuation to have been made in a specified manner according to which the

aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to a minimum standard herein provided may, with the approval of the Commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(b)(1) This subsection shall apply to only those policies and contracts issued prior to the operative date of § 35-507 (the standard nonforfeiture law).

(2) The legal minimum standard for the valuation of life insurance contracts issued before January 1, 1935, shall be the method and basis of valuation heretofore applied by the Commissioner in the valuation of such contracts, and for life insurance contracts issued on and after said date shall be the 1-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at 3½% per annum; provided, that any life company may, at its option, value its insurance contracts issued on and after January 1, 1935, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than 3½% per annum by the level net premium method or by the modified preliminary term method hereinafter described.

(3) If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than 20 years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under 20-payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the 1st, shall not be less than the reserve on a 20-payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a 20-payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such 20-payment life preliminary term policy and such limited payment life or endowment policy.

(4) Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with modified preliminary term method of valuation provided for herein.

(5) Except as otherwise provided in paragraph (3) of subsection (c) of this section for group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities issued on and after January 1, 1935, shall be McClintock's Table of Mortality Among Annuitants, with interest at 4% per annum, but annuities deferred 10 or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the company.

(6) The legal minimum standard for the valuation of industrial policies issued after January 1, 1935, shall be the American Experience Table of Mortality with interest at  $3\frac{1}{2}\%$  per annum; provided, that any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

(7) The Commissioner may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in countries other than the United States, and in particular cases of invalid lives and other extra hazards.

(8) Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(c)(1) This subsection shall apply to only those policies and contracts issued on or after the operative date of § 35-507 (the standard nonforfeiture law) except as otherwise provided in paragraph (3) of this subsection for group annuity and pure endowment contracts issued prior to such operative date.

(2) Except as otherwise provided in paragraph (3) of this subsection and subsection (d) of this section, the minimum standard for the valuation of all such policies and contracts shall be the Mayor's reserve valuation methods defined in paragraphs (4) and (5) of this subsection and in § 35-526,  $3\frac{1}{2}\%$  interest per annum, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the October 13, 1978,  $4\frac{1}{2}\%$  interest per annum, and the following tables:

(A) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of paragraph (5) of § 35-507(d), and the Commissioners 1958 Standard Ordinary Mortality Table for category of the policies issued on or after the operative date of the 5th paragraph in § 35-507(d) and before the operative date for the category of policies described in § 35-507(e); provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than 6 years younger than the actual age of the insured and for any category of the policies issued on or after the operative date for the category described in § 35-507(e), the Commissioners 1980 Standard Ordinary Mortality Table, or at the election of the company for any 1 or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors or any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the policies;

(B) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to



the operative date of paragraph (6) of subsection (d) of § 35-507, and for such policies issued on or after such operative date; provided, that for any category of such policies issued on female risks and evaluated by either the 1941 Standard Industrial Mortality Table or the Commissioners 1961 Standard Industrial Mortality Table, all modified net premiums and present values referred to in this section may be calculated according to an age not more than 6 years younger than the actual age of the insured, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the policies;

(C) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these Tables approved by the Commissioner;

(D) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such Table approved by the Commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(E) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(F) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standards for valuing the policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Intercompany Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; or

(G) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Commissioner.

(3)(A) Except as provided in subsection (d) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the Mayor's reserve valuation methods defined in paragraphs (4) and (5) of this subsection and the following tables and interest rates:

(i) For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the contracts, or any modification of the tables approved by the Commissioner and  $7\frac{1}{2}\%$  interest per annum;

(ii) For individual annuity and pure endowment contracts, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the contracts, or any modification of the tables approved by the Commissioner and  $5\frac{1}{2}\%$  interest per annum for single premium deferred annuity and pure endowment contracts and  $4\frac{1}{2}\%$  interest per annum for all other such individual annuity and pure endowment contracts; or

(iii) For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, any group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the annuities and the pure endowments, or any modification of the tables approved by the Commissioner and  $7\frac{1}{2}\%$  interest per annum.

(B) After October 13, 1978, any company may file with the Commissioner a written notice of its election to comply with the provisions of this paragraph (3) after a specified date before January 1, 1979, which shall be the operative date of this paragraph (3) for such company, provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph (3) for such company shall be January 1, 1979.

(4)(A) Except as provided in paragraph (5) of this subsection and in § 35-526, and according to the reserve valuation method, reserves for life insurance and endowment benefits from policies providing uniform amounts of insurance and requiring uniform premium payments shall be the excess of the present value, on the valuation date, of the future guaranteed benefits from the policies over the then present value of any future modified net premiums.

(B) The modified net premiums shall be a uniform percentage of the respective premiums that makes the present value, on the issuance date, of all

modified net premiums equal the sum of the then present value of the benefits and the excess of the amount described in sub-subparagraph (i) of this subparagraph over the amount described in sub-subparagraph (ii) of this subparagraph.

(i) Except as provided in subparagraph (C) of this paragraph, a net level annual premium equal to the present value, on issuance date, of the benefits provided after the 1st policy year, divided by the present value, on issuance date, of an annuity of 1 per year to be paid on every anniversary of the policy for which a premium becomes due.

(ii) A net 1-year term premium for the benefits provided in the 1st policy year.

(C) The net level annual premium described in subparagraph (B)(i) of this paragraph shall not exceed the net level annual premium or the 19-year premium whole life plan for insuring the same amount at an age 1 year higher than the age at issuance in the policy.

(4A)(A) This paragraph governs life insurance policies issued after December 31, 1986, when the policies have the following features:

(i) The premium for the 1st year of the life insurance policy exceeds the premium for the 2nd year.

(ii) The policy does not provide an additional benefit in the 1st year of the policy for the amount that the 1st-year premium exceeds the premium for the 2nd year.

(iii) The policy provides an endowment benefit or a cash surrender value that exceeds the difference in the 1st year and the 2nd year premiums.

(B) Except as provided in § 35-502, and according to the reserve valuation method on any policy anniversary that takes place no later than the 1st year after a life insurance policy provides an endowment benefit or a cash surrender value that, together, exceeds the difference in the premiums described in subparagraph (A)(i) of this paragraph, the reserve shall be the greater of the following amounts:

(i) The reserve on the policy anniversary as described in paragraph (4) of this subsection.

(ii) The reserve on the policy anniversary as described in paragraph (4) of this subsection, but with the amount described in paragraph (4)(B)(i) of this subsection reduced by 15% of the excess 1st year premium, with present values of benefits and premiums determined without reference to premiums or benefits after the 1st year after a life insurance policy provides an endowment benefit or a cash surrender value that, together, exceeds the difference in the premiums described in subparagraph (A)(i) of this paragraph, with an assumption that the policy will mature as an endowment on that date; and with the cash surrender value provided on that date regarded as an endowment benefit.

(C) For the comparison described in subparagraph (B) of this paragraph, the mortality and interest bases described in paragraphs (3) and (4) of this subsection and in subsection (d)(2) and (3) of this section shall apply.

(5)(A) This paragraph shall apply to all annuity and pure endowment contracts except those group annuity and pure endowment contracts for which reserves are to be calculated by a method consistent with the principles of paragraph (4) of this subsection.



(B) Reserves according to the Mayor's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation consideration derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(6) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated according to the method described in paragraph (4) of this subsection, in subsection (e) of this section, in § 35-526, and in the mortality tables and rates of interest used to calculate nonforfeiture benefits for the policies.

(7) Reserves for any category of policies, contracts, or benefits, as established by the Commissioner, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(d)(1) The calendar year statutory valuation interest rates shall be the interest rates used to determine the minimum standard for valuing the following:

(A) Life insurance benefits under § 35-507 and issued no earlier than the operative date for policies under § 35-507(e).

(B) All annuities and pure endowments purchased under group annuity and pure endowments contracts after December 31, 1983.

(C) Except as provided in subparagraphs (A) and (B) of this paragraph, all life insurance benefits, individual annuity contracts, and pure endowment contracts issued after December 31, 1983.

(D) In a calendar year following December 31, 1983, the net increase of amounts held under guaranteed interest contracts.

(2) The calendar year statutory valuation interest rates shall be determined according to the equations described in this paragraph, and the results from the equations shall be rounded to the nearest  $\frac{1}{4}\%$ .

(A) For life insurance, the equation for determining the calendar year statutory valuation interest rates is the following:

$$I = .03 + W(R - .03) + \frac{W}{2}(R2 - .09).$$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where  $R_{/1}$  is the lesser of  $R$  and  $.09$ ,

$R_{/2}$  is the greater of  $R$  and  $.09$ ,

$R$  is the reference interest rate described in paragraph (4) of this subsection,

and  $W$  is the weighting factor.

(C) Where cash settlement options are valued on an issue year basis, the formula in subparagraph (A) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration exceeding 10 years and the formula in subparagraph (B) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

(D) Where no cash settlement options apply, the formula for single premium immediate annuities stated in subparagraph (B) of this paragraph shall apply.

(E) Where cash settlement options are valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (B) of this paragraph shall apply.

(F)(i) If the calendar year statutory valuation interest rate for life insurance policies for a calendar year differs from the actual interest rate for similar policies issued in the preceding calendar year by less than  $\frac{1}{2}\%$ , the calendar year statutory valuation interest rate shall equal the corresponding actual interest rate for the preceding calendar year.

(ii) The calendar year statutory valuation interest rate shall be determined for each calendar year regardless of when § 35-507(e) becomes operative.

(3) The weighting factors in the paragraph (2)(A) and (B) of this subsection equations are as follows:

(A) Weighting factors for life insurance:

<i>Guarantee Duration (Years)</i>	<i>Weighting Factors</i>
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy.

(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options: .80.

(C) Except as provided in subparagraph (B) of this paragraph, weight-

ing factors for other annuities and for guaranteed interest contracts shall be specified in the following sub-subparagraphs:

(i) For purposes of this subsection, the following plan types apply:

“Plan Type A” means that, unless the company prohibits a withdrawal, the policyholder may withdraw funds with an adjustment to reflect changes in interest rates or asset values since the company received the funds; without adjustment, but in installments for 5 years or more; or as an immediate life annuity.

“Plan Type B” means that, before the interest rate guarantee expires, and unless the company prohibits a withdrawal, the policyholder may withdraw funds with an adjustment to reflect changes in interest rates or asset values since the company received the funds; without the adjustment, but in installments for 5 years or more; or, after the interest rate guarantee ends, in a lump sum without the adjustment or in installments lasting less than 5 years.

“Plan Type C” means that, before the interest rate guarantee expires, the policyholder may withdraw funds in a lump sum or in installments lasting less than 5 years, and either without the withdrawal being adjusted to reflect changes in interest rates or asset values since the company received the funds or with the withdrawal subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(ii) Weighting factors for annuities and guaranteed interest contracts valued on an issue year basis:

<i>Guarantee Duration</i>	<i>Weighting Factor for Plan Type</i>		
	<i>A</i>	<i>B</i>	<i>C</i>
<i>(Years)</i>			
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35.

(iii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in sub-subparagraph (ii) of this subparagraph increased by:

<i>Plan Type</i>		
<i>A</i>	<i>B</i>	<i>C</i>
.15	.25	.05.

(iv) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) and which do not guarantee interest on considerations received more than 1 year after issue or purchase, and for annuities and guaranteed interest contracts valued on a change in fund basis and which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the



factors shown in sub-subparagraph (ii) of this subparagraph or derived in sub-subparagraph (iii) of this subparagraph increased by:

<i>Plan Type</i>		
<i>A</i>	<i>B</i>	<i>C</i>
<i>.05</i>	<i>.05</i>	<i>.05.</i>

(v) Where cash settlement options apply to annuities and guaranteed interest contracts, the guarantee duration is the number of years that the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years.

(vi) Where no cash settlement options apply to annuities or guaranteed interest contracts, the guarantee duration is the number of years from the issuance or the purchase date that the policy has scheduled the annuity benefits to begin.

(D)(i) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis.

(ii) Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis.

(iii) An issue year basis of valuation refers to a valuation basis where the interest rate used to determine the minimum valuation standard for the annuity or the guaranteed interest contract is the calendar year valuation interest rate for the issuance year or purchase year.

(iv) The change in fund basis of valuation refers to a valuation basis where the interest rate used to determine the minimum valuation standard for each change in the annuity or the guaranteed interest contract fund is the calendar year valuation interest rate for the year that the fund changed.

(4) The reference interest rate referred to in paragraph (2) of this subsection shall be as follows:

(A) For all life insurance, the reference rate shall be the lesser between the average rate during a 36-month period and the average rate during a 12-month period ending June 30 of the calendar year preceding the issuance year.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising where cash settlement options apply to other annuities and to guaranteed interest contracts, the reference rate shall be the average rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(C) Where guarantee duration exceeds 10 years and where cash settlement options for annuities and for guaranteed interest contracts have values based upon the issuance year, the reference rate shall be the least between the average rate during a 36-month period and the average rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(D) Where guarantee duration does not exceed 10 years and where cash settlement options for annuities and for guaranteed interest contracts have values based upon the issuance year, the reference rate shall be the average

rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the reference rate shall be the average rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(F) Where cash settlement options apply to annuities and to guaranteed interest contracts and have values based on a change in the fund, the reference rate shall be the average rate during a 12-month period ending June 30 of the calendar year of the change in the fund.

(5)(A) Moody's Corporate Bond Yield Average — Monthly Average Corporate published by Moody's Investors Service, Inc., shall set the reference rates described in paragraph (4) of this subsection.

(B) If the National Association of Insurance Commissioners determines that Moody's Investors Service, Inc., is no longer an appropriate source for the reference rate, then an alternative method shall be adopted by the National Association of Insurance Commissioners and approved by the Commissioner.

(e) For life insurance plans which require the company to fix future premium determination according to the then present estimates of future experience, and for life insurance plans or annuities with minimum reserves that cannot be determined by the methods described in subsection (c)(5) and (6) of this section and in § 35-526, the reserves held under the plan shall:

(1) Be appropriated in relation to the benefits and the pattern of premiums for the plan.

(2) Be computed by a method consistent with the principles of the Standard Valuation Law and according to regulations promulgated by the Commissioner. (June 19, 1934, 48 Stat. 1156, ch. 672, ch. V, § 1; Feb. 19, 1948, 62 Stat. 27, ch. 66, § 1; June 27, 1960, 74 Stat. 227, Pub. L. 86-530, § 1; Oct. 3, 1962, 76 Stat. 711, Pub. L. 87-738, § 1; 1973 Ed., § 35-701; Oct. 13, 1978, D.C. Law 2-120, §§ 2, 3, 25 DCR 1519; Mar. 14, 1985, D.C. Law 5-160, § 3(d), 32 DCR 39; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Cross references.** — As to calculation of reserves necessary if actual premium is less than net premium, see § 35-526.

As to application of chapter to existing companies, see § 35-620.

**Section references.** — This section is referred to in §§ 35-507, 35-526, and 35-619.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 2-120.** — Law 2-120 was introduced in Council and assigned Bill No. 2-304, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 27, 1978, and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-250 and trans-

mitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Legislative history of Law 5-160.** — See note to § 35-531.

**Editor's notes.** — References in D.C. Law

5-160 in this section and in § 35-526 have been translated accurately to reflect the D.C. Code numbering system for § 35-501(c). It should be noted, however, that the numbering system used by the D.C. Code and the numbering system used by the Organic Law for § 35-501(c) differ markedly.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Com-

missioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

## § 35-502. Companies issuing both participating and non-participating policies.

Every life company doing business in the District which issues both participating and nonparticipating policies shall keep the 2 classes of business separate and shall make, and include in the annual statement to be filed with the Commissioner each year, a separate statement of the gains, losses, and expenses properly attributable to each of such classes and also showing the manner in which any general outlay of expenses of the company has been apportioned to each. No such life company shall be permitted to do business in the District unless it makes such a separation of its business. This section shall not apply to paid-up, temporary, or pure endowment insurance issued or granted in exchange for lapsed or returned policies. (June 19, 1934, 48 Stat. 1157, ch. 672, ch. V, § 2; 1973 Ed., § 35-702; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-501.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.



**§ 35-503. Life policies — Required provisions.**

(a) No life insurance policy other than industrial insurance, annuities, and pure endowments shall be issued or delivered in the District or shall be issued by a life company organized under District laws after the 1st day of January, 1935, unless the policy has the following features:

(1) A provision that all premiums after the 1st year shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by 1 or more of the officers who shall be designated in the policy.

(2)(A) A provision that the insured is entitled to a grace period of at least 30 days or of 1 month within which the payment of any premiums after the 1st year may be made, subject at the option of the company to an interest charge not in excess of 6 per centum per year for the number of days of grace elapsing before the payment of the premium.

(B) A provision that, if the policy becomes a claim during the grace period before overdue or deferred premiums of the current policy year are paid, the amount of the premiums, with interest on any overdue premiums, may be deducted from any settlement payable under the policy.

(C) A provision that grace shall begin on the premium-paying date stated in the policy.

(3)(A)(i) Except as provided in subparagraphs (B) and (C) of this paragraph, a provision that the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for at least 2 years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service during a war, and at the option of the company, provisions relative to benefits when total and permanent disability occurs and provisions granting additional insurance specifically against death by accident may also be excepted.

(ii) All statements made by the insured shall, in the absence of fraud, be considered representations and not warranties.

(iii) No statements by the insured shall be used in defense of a claim under the policy unless the statements are in a written application and a copy of the statements are endorsed upon or attached to the policy when issued.

(B) A provision that nothing in this paragraph applies to applications for reinstatement.

(C) A provision that a reinstated policy shall be contestable for fraud or for misrepresenting material facts for as long a period as provided by the original policy.

(4) A provision that if the company discovers before the final settlement that the age of the insured (or the age of the beneficiary, if considered in determining the premium) has been wrongly stated, the amount payable under the policy shall be the amount the premium would have purchased had the correct age been stated, according to the company's rate at date of issue.

(5)(A)(i) A provision that the policy shall participate in the surplus of the company and that any policy containing provisions for participation at the end

of the 1st policy year and afterwards may also provide that each dividend shall be paid subject to the payment of premium for the next year.

(ii) A provision that the insured under any annual dividend policy shall have the right each year to receive dividends from the participation paid in cash.

(iii) A provision that if the policy provides other dividend options, the policy shall explain which options shall be effective if the insured does not elect any of the other options by the end of the grace period allowed for paying the premium.

(B) A provision that the requirements described in subparagraph (A) of this paragraph shall not apply to any form of paid-up insurance, temporary insurance, or pure endowment insurance issued or granted in exchange for lapsed or surrendered policies and shall not apply to nonparticipating policies.

(6)(A)(i) Except as provided in subparagraphs (A)(iv), (v), and (B) of this paragraph, a provision that, after the policy has been in force for 3 full years, the company will loan to the insured, while the policy is in force, on proper assignment or pledge of the policy and on the sole security of the policy and at a specified interest rate, a sum equal to or, at the option of the insured, less than the amount required by § 35-507.

(ii) A provision that the company will deduct from the loan value any indebtedness not already deducted when determining the value and any unpaid balance on premiums for the current policy year.

(iii) A provision that the company may collect, in advance, interest on the loan to the end of the current policy year.

(iv) The provisions described in subparagraph (A)(i) through (iii) of this paragraph shall not be required in term insurance, temporary insurance, or pure endowment insurance issued or granted in exchange for lapsed or surrendered policies. The policy may further provide that if the interest on the loan is not paid when due, it shall be added to the existing loan and shall bear interest at the same rate.

(v) The specified interest rate mentioned in subparagraph (A)(i) of this paragraph shall not apply to policies issued after March 14, 1985.

(B) Policies issued after March 14, 1985, shall include a provision describing the policy loan interest rates to be 1 of the following:

(i) Not more than 8% per year.

(ii) An adjustable maximum interest rate established by the company under subparagraph (C) of this paragraph.

(C) The interest rate described in paragraph (6)(B)(ii) of this subsection shall be in a policy which describes how frequently the company determines the rates, and the rates shall not exceed the higher of the following:

(i) The published monthly average for the calendar month ending 2 months before the company determines the interest rate; or

(ii) The sum of 1 per centum per year and the rate used by the company when computing the cash surrender value during the applicable period.

(D) For policies issued after March 14, 1985, which contain an interest rate determined pursuant to subparagraph (B)(ii) of this paragraph, the following provisions shall be included in the policy:

(i) The maximum interest rate shall be determined at least once

every 12 months, at regular intervals, but not more frequently than once every 3 months.

(ii) The interest rate being charged may be increased when the rate-determination standards described in subparagraph (C) of this paragraph indicate at least a  $\frac{1}{2}\%$  per year increase in the maximum rate.

(iii) The interest rate being charged shall be decreased when the rate-determination standards described in subparagraph (C) of this paragraph require at least a  $\frac{1}{2}\%$  per year decrease in the maximum rate.

(E) Except as provided in subparagraph (E)(v) of this paragraph and for policies issued after March 14, 1985, policies shall include a provision that the company shall notify, in the following manner, a policyholder who borrows under the policy:

(i) When the company makes a cash loan, a written notice of the initial interest rate.

(ii) When the company makes a premium loan, a written notice, within a reasonable time after the loan, of the initial interest rate.

(iii) When the company plans to increase the interest rate, a written notice within a reasonable time before the rate increase of the change in the rate.

(iv) Every notice described in this subparagraph shall describe how frequently the company, under subparagraph (C) of this paragraph, reevaluates the rates and also shall describe, under subparagraph (B) of this paragraph, the rates either as no more than 8% per year or as an adjustable rate under subparagraph (C) of this paragraph.

(v) Except as provided in subparagraph (E)(iii) of this paragraph, notice shall not be required for premium loans added to an original premium loan described in subparagraph (E)(ii) of this paragraph.

(F) The loan value of the policy shall be determined according to § 35-509, but no policy shall terminate in a policy year as the sole result of change in the interest rate and the life insurer shall maintain coverage until the time at which it would otherwise have terminated if there had been no increase during that policy year.

(G) For purposes of subparagraphs (B) through (G) of this paragraph:

(i) The term “published monthly average” means Moody’s Corporate Bond Yield Average — Monthly Average Corporates published by Moody’s Investors Service, Inc., or any successor thereto; or in the event that Moody’s Corporate Bond Yield Average — Monthly Average Corporates is no longer published, a substantially similar average, established by regulation issued by the Commissioner.

(ii) The rate of interest on policy loans permitted under this subsection also includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy.

(iii) The term “policy loan” also includes any premium loan made under a policy to pay 1 or more premiums that were not paid to the life insurer as they fell due.

(iv) The term “policyholder” includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.



(v) The term "policy" also includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(H) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates.

(I) The provisions of subparagraphs (B) through (H) of this paragraph shall not apply to any insurance contract issued before March 14, 1985, unless the policyholder agrees in writing to the application of such provisions.

(7) A provision for nonforfeiture benefits and cash surrender values according to the requirements of § 35-506 or § 35-507.

(8) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment.

(9) A table showing in figures the loan values and the options available under the policy each year upon default in premium payments, during at least the first 20 years of the policy or during the premium paying period if less than 20 years.

(10) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and cancelled, the policy may be reinstated within 3 years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium at the rate of not exceeding 6% per annum payable annually, and that such reinstated policy shall be contestable, on account of suicide, fraud, or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue. The rate of interest on policy loans permitted under this subsection also includes the interest rate charged on reinstatement policy loans for the period during and after any lapse of the policy.

(11) A provision that, when a policy shall become a claim by death of the insured, settlement shall be made upon receipt of due proof of death.

(12) A table showing the amount of installments, if any, in which the policy may provide its proceeds may be payable.

(13) Title on the face and on the back of the policy briefly describing its form.

(b) Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the Commissioner contains provisions on any 1 or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies of reinsurance, or to policies issued or granted in exchange for lapsed or surrendered policies, or to group insurance. (June 19, 1934, 48 Stat. 1158, ch. 672, ch. V, § 3; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 2; 1973 Ed., § 35-703; Oct. 13, 1978, D.C. Law 2-120, § 4, 25 DCR 1519, Mar. 14, 1985, D.C. Law 5-160, § 3(e), 32 DCR 39; Feb. 24, 1987, D.C. Law 6-192, § 25(a)-(d), 33 DCR 7836; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Cross references.** — As to effect of false statements in application, see § 35-414.

As to standard provisions for valuation of policies, see § 35-501.

As to standard provisions for annuity and endowment contracts, see § 35-505.

As to standard provisions for group life policies, see § 35-515.

As to standard provisions for accident and health policies, see § 35-517.

As to special provisions governing industrial policies, see § 35-901 et seq.

**Section references.** — This section is referred to in §§ 35-506 and 35-509.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in (a)(6)(G)(i) and (b).

**Legislative history of Law 2-120.** — See note to § 35-501.

**Legislative history of Law 5-160.** — See note to § 35-531.

**Legislative history of Law 6-192.** — Law

6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Effective date for application of inapplicability clause.** — Where the premiums on a life policy were paid on October 1, 1973, and monthly thereafter, and where the policy anniversaries were measured from such date, that date was when the policy became effective, and the policy became incontestable 2 years from October 1, 1973. *Manufacturers Life Ins. Co. v. Capitol Datsun, Inc.*, 566 F.2d 354 (D.C. Cir. 1977).

## § 35-504. Same — Prohibited provisions.

No policy of life insurance other than industrial insurance, annuities, and pure endowments, with or without return of premiums or of premiums and interest, shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935 if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than 3 years after the cause of action shall accrue;

(2) A provision by which the policy shall purport to be issued or take effect more than 6 months before the original application for the insurance was made;

(3) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy, of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision;

(4) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof;

(5) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy;

(6) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States; or

(7) A provision permitting either contracting to pay, or the payment of, funeral, burial, and other expenses to any designated undertaker or under-

taking establishment, or to any particular tradesman or business man, so as to deprive the persons entitled by law to dispose of the body of a deceased, or in any way to control such persons in procuring and purchasing said supplies and services in the open market with the advantage of competition. (June 19, 1934, 48 Stat. 1161, ch. 672, ch. V, § 4; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 3; 1973 Ed., § 35-704.)

**Cross references.** — As to prohibition against discrimination, see § 35-520.

**“Engaged in war” provision construed.** — Where the insured was fatally injured when he fell from hotel window in France on October 2, 1945, while serving with occupation forces, the United States was not a country “engaged

in war” within life policy provision restricting liability, even though war had not terminated in a political sense. *Stinson v. New York Life Ins. Co.*, 167 F.2d 233 (D.C. Cir. 1948).

**Cited in** *Hayes v. Home Life Ins. Co.*, 168 F.2d 152 (D.C. Cir. 1948).

### **§ 35-505. Annuity and pure endowment contracts; forms to be filed and approved; required provisions; applications, riders and endorsements.**

(a) On and after January 1, 1935, no annuity or pure endowment contract shall be issued or delivered in the District unless and until a copy of the form thereof has been filed with the Commissioner and formally approved by him.

(b) Except in the case of a reversionary annuity, otherwise called a “survivorship annuity,” or an annuity contracted by an employer in behalf of his employees, no annuity or pure endowment contract shall be so issued or delivered in this District unless it contains, in substance, the following provisions:

(1) A provision that there shall be a period of grace, either of 30 days or of 1 month, within which any stipulated payment to the company falling due after the 1st year may be made, subject, at the option of the company, to an interest charge thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death during the said period of grace before the overdue payment to the company or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement;

(2) If statements, other than those relating to age and identity, are required, as a condition of issuing the contract, a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or each of the persons as to whom such statements are required, for a period of 2 years from its date of issue, except where stipulated payments to the company have not been made, and except for violation of the conditions of the contract relating to military or naval service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant insurance specifically against death by accident may also be excepted;

(3) A provision that such contract shall constitute the entire contract between the parties, but if the company desires to make the application a part



of the contract it may do so, provided a copy of such application shall be endorsed upon or attached to such contract, when issued, and in such case such contract shall contain a provision that it, together with the application therefor, shall constitute the entire contract between the parties;

(4)(A) A provision that if the age of the person or persons upon whose life or lives the contract is based, or of any of them, has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct age or ages; or

(B) Any overpayment or overpayments by the company, on account of misstatement of age, shall with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, be charged against the current or next-succeeding payment or payments to be made by the company under the contract;

(5) If the contract is participating, a provision that the divisible surplus shall be apportioned annually and dividends shall be payable in cash or shall be applicable to any stipulated payment or payments to the company under the contract;

(6) A provision specifying the options available in the event of cessation of payment of considerations under the contract. In the case of contracts issued on or after the operative date of § 35-508 (the standard nonforfeiture law for individual deferred annuities), such options shall be in accordance with § 35-508. In the case of contracts issued prior to the operative date of § 35-508, such option shall provide that if the contract, after having been in force for 3 full years, shall, by its terms, lapse or become forfeited because any stipulated payment to the company shall not have been made, the reserve on such contract, computed according to the standard adopted by said company in accordance with this chapter, shall, after deducting one fifth of the said entire reserve, and any indebtedness to the company under the contract, be applied as a net single payment, according to said standard, for the purchase of a paid-up annuity or pure endowment contract, which may be nonparticipating and which shall be payable by the company under the same terms and conditions, except as to amount, as the original contract. For contracts issued prior to the operative date of § 35-508, a company may provide, in lieu of such paid-up values, for a paid-up annuity or pure endowment contract in an amount bearing the same proportion to the original annuity or pure endowment contract as the number of stipulated payments which shall have been made to the company shall bear to the total number of stipulated payments required to be made to the company under the contract, and if there be any indebtedness to the company under the contract, the amount of such paid-up annuity or pure endowment shall be reduced by an amount bearing the same proportion to such paid-up annuity or pure endowment as such indebtedness bears to the reserve on such paid-up annuity or pure endowment, computed according to the standard adopted by said company in accordance with this chapter; and

(7) A provision that the contract may be reinstated at any time within 1 year from the date of default in making stipulated payments to the company, provided that all overdue stipulated payments and any indebtedness to the

company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract, but not exceeding 6% per annum, payable annually. In cases where applicable a company may also include a requirement of evidence of insurability satisfactory to the company.

(c) No contract for a reversionary annuity shall be so issued or delivered unless it contains in substance the following provisions:

(1) Paragraphs (1), (2), (3) and (5) of subsection (b) of this section, except that under paragraph (1) of subsection (b) of this section, the company may, at its option, provide for an equitable reduction of the amount of the annuity payments in settlement of any overdue or deferred payments, in lieu of providing for a deduction of such payments from any amount payable upon a settlement under the contract;

(2) A provision that, if the age of any of the persons upon whose lives the contract is based has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct ages; and

(3) A provision that the contract may be reinstated at any time within 3 years from the date of default in making stipulated payments to the company, upon production of evidence of insurability satisfactory to the company, provided that all overdue payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, payable annually.

(d) Any of the foregoing provisions or portions thereof not applicable to nonparticipating contracts nor to contracts for which a single stipulated payment to the company is made shall, to that extent, not be incorporated therein; and any such contract may be issued or delivered in this District, which, in the opinion of the Commissioner, contains provisions on any 1 or more of the several foregoing requirements, more favorable to the holder of the contract than hereinbefore required.

(e) Nothing herein contained shall be construed to prevent a life company, which issues life insurance on a participating basis, from issuing annuities, reversionary annuities, or pure endowments on a nonparticipating basis.

(f) Any such contract or any application, endorsement, or rider form used in connection therewith, issued in violation of this section, shall, nevertheless, be held valid, but shall be construed as provided in this section and when any provision in such contract, application, endorsement, or rider is in conflict with any provision of this section or with any other statutory provision, the rights, duties, and obligations of the company, of the holder of the contract and of the beneficiary or annuitant thereunder shall be governed by the provisions of this section.

(g) The provisions of this section shall not apply to contracts of reinsurance nor to contracts for deferred annuities or reversionary annuities included in life insurance policies.

(h) For the purposes of this section, application forms, rider forms, and endorsement forms for use in connection with any such contract, excepting riders or endorsements relating to the manner of distribution of benefits or to

the reservation of rights and benefits under any such contract, and used at the request of the individual holders of such contracts, shall be deemed to be parts of such contract and shall require the approval of the Commissioner. No rider and no endorsement, except as stated above, shall be attached to or printed or stamped upon any such contract issued or delivered in the District until the form of such rider or endorsement has been filed with the Commissioner and formally approved by him. (June 19, 1934, 48 Stat. 1161, ch. 672, ch. V, § 5; 1973 Ed., § 35-705; Oct. 13, 1978, D.C. Law 2-120, § 5, 25 DCR 1519; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Cross references.** — As to requirement that copy of application be delivered with policy, see § 35-203.

As to effect of false statements in application, see § 35-414.

As to valuation of policies, see § 35-501.

As to provisions prohibited in life policies, see §§ 35-504 and 35-517.

As to provisions required in group life policies, see § 35-515.

As to special provisions governing industrial policies, see § 35-901 et seq.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for

"Superintendent" once in (a) and (d), and twice in (h).

**Legislative history of Law 2-120.** — See note to § 35-501.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**References in text.** — The "operative date of § 35-508," referred to throughout paragraph (b)(6) of this section, is prescribed by § (9)(b) of D.C. Law 2-120.

**Department of Insurance abolished.** — See note to § 35-501.

## § 35-506. Nonforfeiture benefits and cash surrender values.

(a) This section shall apply only to policies of life insurance issued prior to the operative date of § 35-507 (the standard nonforfeiture law).

(b) The nonforfeiture benefits referred to in paragraph (7) of subsection (a) of § 35-503 shall be available to the insured in event of default in premium payments, after premiums shall have been paid for 3 years, and shall be a stipulated form of insurance, effective from the due date of the defaulted premium, the net value of which shall be at least equal to the reserve at the date of default on the policy and on dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and on total and permanent disability and additional accidental death benefits (the policy to specify the mortality table and rate of interest adopted for computing such reserve), less a specified percentage (not more than 2½) of the amount insured by the policy and of existing dividend additions thereto, if any, and less any existing indebtedness to the company on or secured by the policy; provided, that a company may, in lieu of the provision herein permitted for the deduction from the reserve of a sum not more than 2½% of the amount insured by the policy, and of any dividend additions thereto, insert in the policy a provision that one fifth of said reserve may be deducted, or may provide therein that a deduction may be made of said 2½% or one fifth of said reserve, at the option of the company; provided further, that the policy may be surrendered to the company at its home office within 1 month of the due date of defaulted premium for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid; and provided



further, that the company may defer payment for not more than 6 months after the application therefor is made. A provision may also be inserted in the policy that in event of default in a premium payment before such benefit becomes available, the reserve on any dividend additions then in force may at the option of the company be paid in cash or applied as a net premium to the purchase of paid-up term insurance for any amount not in excess of the face of the original policy. This section shall not apply to term insurance of 20 years or less. The net single premium rate employed in computing the term of temporary insurance or the amount of pure endowment insurance granted as a nonforfeiture value under any life insurance policy may at the option of the company be based upon a table of mortality showing rates of mortality not greater than 130 per centum of those shown by the American Men Ultimate Table of Mortality instead of the table used in computing the reserve on the policy, or in case of substandard policies not greater than 130 per centum of the rates of mortality shown by the table of mortality approved by the Commissioner for computing the reserve on the policy, anything herein to the contrary notwithstanding. (June 19, 1934, ch. 672, ch. V, § 5a; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4; 1973 Ed., § 35-705a; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-503 and 35-528.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the last sentence in (b).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**References in text.** — The “operative date of § 35-507,” referred to in subsection (a) of this

section, was prescribed by § 2 of the Act of October 3, 1962, 76 Stat. 712, Pub. L. 87-738, and was formerly codified as § 35-507(g). Section 35-507 was rewritten effective March 14, 1985, and no longer contains the “operative date” language.

**Department of Insurance abolished.** — See note to § 35-501.

## § 35-507. Standard nonforfeiture law — In general.

(a)(1) Except as provided in subsections (i) and (j) of this section and for policies issued after the operative date of this section, no life insurance policy shall be issued or delivered in the District of Columbia unless it contains the following provisions or corresponding provisions which the Commissioner considers at least as favorable to the defaulting or surrendering policyholder as the following provisions;

(A)(i) If the insured defaults on a premium payment after premiums have been paid 1 full year for ordinary insurance or 3 full years for industrial insurance, the company shall grant, upon proper request no later than 60 days after the premium became due, a paid-up nonforfeiture benefit on a plan stipulated in the policy, and the paid-up nonforfeiture benefit shall be effective when the premiums became due.

(ii) The company may substitute for the nonforfeiture benefit described in subparagraph (A)(i) of this paragraph an actuarially equal alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or a greater amount or earlier payment of endowment benefits.

(B) If the insured defaults on a premium payment after ordinary insurance premiums have been paid for 3 full years or industrial insurance premiums have been paid for 5 full years and surrenders the policy within 60 days after the premiums became due, the company shall pay a cash surrender value instead of paying a paid-up nonforfeiture benefit.

(C) A specified paid-up nonforfeiture benefit shall become effective unless the person entitled to make an election chooses another available option no later than 60 days after the defaulted premium became due.

(D) If all premium payments become paid or if the company continues the policy under a paid-up nonforfeiture benefit which became effective after the eve of the 3rd policy anniversary for ordinary insurance or after the eve of the 5th policy anniversary for industrial insurance, and if the insured surrenders the policy within 30 days after any policy anniversary, the company will pay a cash surrender value.

(E)(i) For policies creating upon the guaranteed bases unscheduled changes in benefits or premiums or having an option for changes in benefits or premiums other than a change to a new policy, the policy shall describe or show the mortality table, the interest rate, and the method used to calculate cash surrender values and paid-up nonforfeiture benefits available under the policy.

(ii) For all other policies, the policy shall show the mortality table and the interest rate used to calculate the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value and paid-up nonforfeiture benefit available under the policy on each anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, and with the values and benefits calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(F)(i) The policy shall provide a brief and general statement of the method to be used in calculating the cash surrender value and the paid-up nonforfeiture benefit available on any policy anniversary after the last anniversary treated in the policy according to the manner described in subparagraph (E)(ii) of this paragraph.

(ii) The brief statement shall explain how paid-up additions and indebtedness on the policy changes the cash surrender values and the paid-up nonforfeiture benefits.

(2) Any subsection (a) provision that does not apply to the plan of insurance in a policy may be omitted from the policy to the extent that the provision does not apply.

(3) The company shall reserve the right to defer the payment of any cash surrender value until 6 months after payment has been demanded and until the insured has surrendered the policy.

(b)(1) Any cash surrender value available under subsection (a) of this section after a default on a premium due on a policy anniversary shall be at least the excess of the present value, on the anniversary, of the future guaranteed benefits which would have been provided by the policy and any existing paid-up additions, had there been no default, over the sum of the following:

(A) The then present value of the adjusted premiums described in subsections (d) and (e) of this section, corresponding to premiums which would have become due after the eve of the anniversary.

(B) The amount of any indebtedness to the company on the policy.

(2) For any policy issued after the operative date of subsection (e) of this section and which provides supplemental life insurance or annuity benefits at the option of the insured and for an additional premium by rider or by supplemental policy provision, the cash surrender value referred to in subsection (b)(1) of this section shall be at least the sum of the cash surrender value for an otherwise similar policy issued at the same age without the rider or the supplemental policy provision and the cash surrender value for a policy which provides only the benefits otherwise provided by the rider or the supplemental provision.

(3) For any family policy issued after the operative date of subsection (e) of this section and which defines a "primary insured" and provides term insurance on the life of the spouse of the primary insured for a period that shall expire before the spouse becomes 71, the cash surrender value referred to in subsection (b)(1) of this section shall be at least the sum of the cash surrender for an otherwise similar policy issued at the same age without the term insurance on the life of the spouse and the cash surrender value for a policy which provides only the benefits otherwise provided by the term insurance on the life of the spouse.

(4) Any cash surrender value available within 30 days after any policy anniversary on a policy paid up by completion of all premium payments or a policy continued under a paid-up nonforfeiture benefit shall be at least the present value, on the anniversary, of the future guaranteed benefits provided by the policy and any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(c) Any paid-up nonforfeiture benefit available under a policy referred to in subsection (a) of this section after a default in a premium payment due on a policy anniversary shall be in a sufficient amount for the present value on the anniversary to be at least equal to the cash surrender value then provided by the policy or, if none is provided, the cash surrender value that would have been required by this section in the absence of the condition that premiums shall be paid for at least a specified period.

(d)(1) This subsection shall not apply to policies issued after the operative date of subsection (e) of this section.

(2) Except as provided in paragraphs (2), (3), and (8) of this subsection, the adjusted premiums for any policy referred to in subsection (a) of this section shall be calculated on an annual basis and shall be a uniform percentage of the premiums for each policy year, excluding any extra premiums charged because of impairments or special hazards, and the adjusted premiums shall equal the sum of:

(A) The value, on the issuance date, of the future guaranteed benefits provided by the policy.

(B) Two per centum of the amount of insurance for uniform amounts of insurance or an equal amount for amounts of insurance that vary with the duration of the policy.



(C) Forty per centum of the adjusted premium for the 1st policy year.

(D) Twenty-five per centum of either the adjusted premium for the 1st policy year or the adjusted premium for a whole life policy of the same or equal uniform amount, with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(3) For the percentages described in paragraph (2)(C) and (D) of this subsection, no adjusted premium shall exceed 4% of the amount of insurance.

(4)(A) For a policy providing an amount of insurance varying with the duration of the policy, the equal uniform amount shall be the uniform amount of insurance provided by an otherwise similar policy that contained the same endowment benefits issued at the same age for the same term, with the benefits not varying with the duration of the policy and with the benefits valued the same on the date of issue as the benefits under the policy.

(B) For a policy providing a varying amount of insurance issued on the life of a child under age 10, the equal uniform amount may be computed as though the amount of insurance provided by the policy before the child became 10 was the amount of insurance provided at age 10.

(5)(A) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall equal the sum of the following:

(i) The adjusted premiums for an otherwise similar policy issued at the same age without the term insurance benefits.

(ii) For the period when premiums for the term insurance benefits become payable, the adjusted premiums for the term insurance.

(B) Except as provided in subparagraph (C) of this paragraph, the equation in subparagraph (A) of this paragraph shall be calculated separately and according to paragraphs (1), (2), and (3) of this subsection.

(C) For paragraph (2)(B), (C), and (D) of this subsection, the amount of insurance or equal uniform amount of insurance used to calculate the adjusted premiums referred to in subparagraph (A)(ii) of this paragraph shall equal the excess of the corresponding amount determined for the entire policy over the amount used to calculate the adjusted premiums described in subparagraph (A)(i) of this paragraph.

(6)(A) Except as provided in subsections (d) and (e) of this section, paragraph (5)(B) and (C) of this subsection, and paragraph (8) of this subsection, all adjusted premiums and present values for ordinary insurance policies shall be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table.

(B) For ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age no more than 3 years younger than the actual age of the insured, and the calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table.

(C)(i) All calculations shall be made on the basis of the rate of interest, not exceeding 3½% per year, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(ii) In calculating the present value of any paid-up term insurance with accompanying pure endowment offered as a nonforfeiture benefit, the

rates of mortality assumed shall not exceed 130% of the rates of mortality according to the applicable table.

(iii) For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on another mortality table specified by the company and approved by the Commissioner.

(7)(A)(i) Except as provided in subparagraphs (B), (C), (D), and (E) of this paragraph and paragraph (8) of this subsection and for ordinary policies issued after the operative date of this paragraph, the adjusted premiums and present values shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the interest rate for calculating cash surrender values and paid-up nonforfeiture benefits shall be specified in the policy.

(ii) Except as provided in sub-subparagraph (iii) of this subparagraph, the interest rate shall not exceed  $3\frac{1}{2}\%$  per year.

(iii) An interest not exceeding  $5\frac{1}{2}\%$  per year may be used for policies issued after October 12, 1978.

(B) For ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age no more than 6 years younger than the actual age of the insured.

(C) In calculating the present value of a paid-up term insurance with pure endowment offered as a nonforfeiture benefit, the rates of mortality assumed may be no more than the rates in the Commissioners 1958 Extended Term Insurance Table.

(D) For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on another mortality table specified by the company and approved by the Commissioner.

(E)(i) After June 27, 1960, a company may file with the Commissioner a written notice of the company's election to comply with this paragraph after a specified date before January 1, 1966.

(ii) After filing the notice, then, on the specified date, this paragraph shall become operative for ordinary policies issued by the company.

(iii) If a company makes no election, then the operative date of the paragraph for the company shall be January 1, 1966.

(8)(A)(i) Except as provided in subparagraphs (B), (C), (D), and (E) of this paragraph and for industrial policies issued after the operative date of this paragraph, adjusted premiums and present values shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the interest rate for calculating cash surrender values and paid-up nonforfeiture benefits shall be specified in the policy.

(ii) Except as provided in subparagraph (A)(iii) of this paragraph, the interest rate shall not exceed  $3\frac{1}{2}\%$  per year.

(iii) An interest rate not exceeding  $5\frac{1}{2}\%$  per year may be used for policies issued after October 12, 1978.

(B) For individual insurance issued on female risks, adjusted premiums and present values may be calculated according to an age no more than 6 years younger than the actual age of the insured.

(C) In calculating the present value of any paid-up term insurance with pure endowment offered as a nonforfeiture benefit, the rates of mortality

assumed shall be no more than the rates in the Commissioners 1961 Industrial Extended Term Insurance Table.

(D) For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on another mortality table specified by the company and approved by the Commissioner.

(E)(i) After October 3, 1962, a company may file with the Commissioner a written notice of the company's election to comply with this paragraph after a specified date before January 1, 1968.

(ii) After filing the notice, then, on the specified date, this paragraph shall become operative for the industrial policies issued by the company.

(iii) If a company makes no election, the operative date of this paragraph for the company shall be January 1, 1968.

(e)(1) This subsection shall apply to all policies issued after the operative date of this subsection.

(2) Except as provided in paragraph (7) of this subsection, the adjusted premiums for a policy shall be calculated on an annual basis and shall be the uniform percentage of the policy premiums for each policy year.

(3) The adjusted premium shall exclude amounts payable as extra premiums to cover impairments or special hazards and shall also exclude a uniform annual contract change or policy fee described in the policy statement of the method used to calculate the cash surrender values and paid-up nonforfeiture benefits.

(4) The present value, on the issuance date, of all adjusted premiums shall be equal to the sum of the following:

(A) The then present value of the future guaranteed benefits provided for by the policy.

(B) One per centum of either the amount of insurance for uniform amounts of insurance or the average amount of insurance at the beginning of each of the first 10 policy years.

(C) One hundred twenty-five per centum of the nonforfeiture net level premium.

(5) For the percentage described in paragraph (4)(C) of this subsection, no nonforfeiture net level premium shall be considered in excess of 4% of either the amount of insurance for uniform amounts of insurance or the average amount of insurance at the beginning of each of the first 10 policy years.

(6) The policy shall issue when the rated age of the insured is determined.

(7) The nonforfeiture net level premium shall be equal to the present value, at the issuance date of the guaranteed benefits provided by the policy divided by the present value, on the issuance date, of an annuity of 1 per year payable when the policy issues and on each anniversary when a premium becomes due.

(8) For policies which create in a guaranteed basis unscheduled changes in benefits or premiums or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present value shall initially be calculated on the assumption that future benefits and premiums do not change from benefits and premiums established when the policy issues.



(9) When the benefits or premiums change, the future adjusted premiums, the nonforfeiture net level, and the present values shall be recalculated on the assumption that future benefits and premiums do not change from the benefits and premiums established by the change.

(10) Except as provided by paragraph (15) of this subsection, the recalculated future adjusted premiums for the policy shall be the uniform percentage of the future premiums for each policy.

(11) The recalculated future premiums shall exclude amounts payable as extra premiums to cover impairments and special hazards and shall also exclude a uniform annual contract charge or policy fee described on the policy in a statement of the method used to calculate the cash surrender values and paid-up nonforfeiture benefits.

(12) At the time of the change to new benefits or premiums, the present value of all the future adjusted premiums shall equal the excess of the sum described in subparagraph (A) of this paragraph over the amount described in subparagraph (B) of this paragraph.

(A) The then present value of the future guaranteed benefits provided by the policy and the additional expense allowance.

(B) The then cash surrender value or present value of paid-up nonforfeiture benefit under the policy.

(13) At the time of the change to the new benefits or premiums, the additional expense allowance shall be the sum of the following:

(A) One per centum of the difference, if positive, between the average amount of insurance at the beginning of each of the first 10 policy years after the change and the average amount of insurance before the change at the beginning of each of the first 10 years after the most recent previous change or, if there has been no previous change, the issuance date.

(B) One hundred twenty-five per centum of the increase in the nonforfeiture net level premium.

(14) The recalculated nonforfeiture net level premium shall equal the result obtained by dividing the equation described in subparagraph (A) of this paragraph with the amount described in subparagraph (B) of this paragraph.

(A) This amount equals the sum of the following:

(i) The nonforfeiture net level premium before the change multiplied by the present value of an annuity of 1 per year payable, after the change, on each anniversary of the policy where a premium would have fallen due had the change not occurred.

(ii) The present value of the increase in future guaranteed benefits provided by the policy.

(B) This amount equals the present value of an annuity of 1 per year payable, after the change, on each anniversary of the policy where a premium falls due.

(15) For a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as

if they were issued to provide the higher uniform amounts of insurance on the standard basis.

(16)(A)(i) Except as provided in subparagraphs (B) through (H) of this paragraph, adjusted premiums and present values shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1980 Standard Ordinary Mortality Table or, at the election of the company for any specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors.

(ii) Adjusted premiums and present values shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table.

(iii) Adjusted premiums and present values shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate for policies issued in the calendar year.

(B) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of an interest rate not exceeding the nonforfeiture interest rate for policies issued in the immediately preceding calendar year.

(C) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available shall be calculated on the basis of the mortality table and the interest rate used to determine the amount of the paid-up nonforfeiture benefit and the paid-up dividend additions.

(D) A company may calculate the guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than the rate specified in the policy for calculating cash surrender values.

(E) In calculating the present value of a paid-up term insurance with pure endowment offered as a nonforfeiture benefit, the rates of mortality assumed shall be no more than the rates in the Commissioners 1980 Extended Term Insurance Table for ordinary insurance policies and no more than the Commissioners 1961 Industrial Extended Term Insurance Table for industrial insurance policies.

(F) For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on appropriate modifications of the tables described in subparagraph (E) of this paragraph.

(G) Any ordinary mortality tables adopted after 1980 by the National Association of Insurance Commissioners and by the Commissioner for determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.

(H) Any industrial mortality tables adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

(17) The nonforfeiture interest rate for a policy issued in a particular calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for the policy, as described in § 35-501, rounded to the nearest  $\frac{1}{4}\%$ .

(18) Any refiling of nonforfeiture values or their methods of computation for a previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of other provisions of the policy form.

(19)(A) After March 14, 1985, a company may file with the Commissioner a written notice of the company's election to comply with this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for the category of insurance for the company.

(B) If a company makes no election for a category of insurance, the operative date for the category of insurance issued by the company shall be January 1, 1989.

(f) For life insurance with future premiums determined by the insurance company based on estimates of future experience or for life insurance with minimum values that cannot be determined according to subsections (a) through (e) of this section, the following requirements shall be complied with:

(1) The Commissioner shall be satisfied that the benefits are substantially as favorable to policyholders and insureds as the benefits required by subsections (a) through (e) of this section.

(2) The Commissioner shall be satisfied that the benefits and the pattern of premiums do not mislead prospective policyholders or insureds.

(3) The cash surrender values and paid-up nonforfeiture benefits shall not be less than the minimum values and benefits required by this section.

(g)(1) Any cash surrender value and any paid-up nonforfeiture benefit, available after a default in the payment of a premium due other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

(2) All values described in subsections (b) through (f) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death.

(3) Besides paid-up term additions, the net value of paid-up additions shall be at least the amounts used to provide the additions.

(4)(A) Notwithstanding subsection (b) of this section, additional benefits payable under the following conditions shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits under this section:

(i) For death or dismemberment by accident.

(ii) For total and permanent disability.

(iii) Reversionary annuity or deferred reversionary annuity benefits.

(iv) Term insurance benefits provided by a rider or by a supplementary policy provision which if issued as a separate policy would not be under this section.

(v) Term insurance on the lives of children under a policy on the life of a parent of the children if the term insurance expires before a child's age is



26, if the term insurance is uniform in amount after a child's age is 1, and if the term insurance has not been paid up because of the parent's death.

(vi) Other policy benefits in addition to life insurance, endowment benefits, and premiums for the additional benefits.

(B) No additional benefits described in paragraph (4)(A) of this subsection shall be required in paid-up nonforfeiture benefits.

(h)(1) This subsection shall apply to policies issued after December 31, 1986.

(2) For uniform amounts of insurance, a cash surrender value available after a default on a premium due on a policy anniversary shall not differ by more than  $\frac{1}{5}$  of 1% of the amount of insurance from the sum of the following:

(A) Either zero or the basic cash value, whichever is greater.

(B) The present value of existing paid-up additions exceeding policy indebtedness to the company.

(3) For insurance amounts not treated in paragraph (2) of this subsection, a cash surrender value available after a default on a premium due on a policy anniversary shall not differ by more than  $\frac{1}{5}$  of 1% of the average insurance amounts at the beginning of the first 10 policy years from the sum of the following:

(A) Either zero or the basic cash value, whichever is greater.

(B) The present value of existing paid-up additions exceeding policy indebtedness to the company.

(4)(A) Except as provided in subparagraphs (B) and (C) of this paragraph, the basic cash value shall equal the present value at the policy anniversary of the future guaranteed benefits exceeding the present value on nonforfeiture factors corresponding with premiums due after the eve of the anniversary.

(B) The future guaranteed benefits used to determine the basic cash value excludes existing paid-up additions and, where there has been no default in premium payments, would be computed without deducting indebtedness to the company.

(C) The basic cash value for supplemental life insurance, annuity benefits, or family coverage shall not be affected differently than cash surrender values described in subsections (b) and (d) of this section.

(5)(A) The nonforfeiture factor for a policy year shall be a percentage of the adjusted premium for the policy year.

(B) Except as provided in paragraph (6) of this subsection, the adjusted premium percentage shall comply with the following:

(i) Except as provided in subparagraph (B)(ii) of this paragraph, the percentage cannot change during policy years between the 2nd policy anniversary and the 5th policy anniversary.

(ii) Unless the 5th anniversary precedes an anniversary when a cash surrender value without paid-up additions and without indebtedness deductions equal at least  $\frac{1}{5}$  of 1% of the amount described in subparagraph (iii) of this paragraph, the percentage cannot change during policy years between the 2nd anniversary and an anniversary with a cash surrender value, without the additions and the deductions, equaling at least  $\frac{1}{5}$  of 1% of the subparagraph (iii) amount.

(iii) The average amount of insurance at the beginning of the first 10 policy years.

(iv) After the latest anniversary referred to in subparagraph (B)(ii) of this paragraph, or the 5th policy anniversary if later, no percentage may apply to fewer than 5 consecutive policy years.

(6) The basic cash value shall exceed the amount that would result in the paragraph (4) formula by replacing the nonforfeiture factors with adjusted premiums.

(7)(A) Adjusted premiums and present values shall be calculated on the mortality and interest rate bases permitted by the Life Insurance Amendments Reform Act of 1984.

(B) The cash surrender values all include endowment benefits under the policy.

(8)(A) Except for a defaulted premium due on a policy anniversary, a cash surrender value and a paid-up nonforfeiture benefit arising from a premium default shall be determined consistently with subsections (a) through (g) of this section.

(B) The cash surrender values and the paid up nonforfeiture benefits granted with additional benefits shall conform with this subsection.

(i)(1) After February 19, 1948, a company, in writing, may inform the Commissioner of the company's election to comply with this section after an expressly selected date before January 1, 1950.

(2) After filing the notice described in paragraph (1) of this subsection, this section shall govern the policies and the contracts issued by the company after the date.

(3) Except as provided in paragraph (4) of this subsection and if a company does not choose a date, then, beginning January 1, 1950, this section shall govern the company.

(4) Subsection (d)(6) and (7) of this section and subsection (e) of this section expressly establish dates when those provisions govern a company.

(j)(1) This section shall not apply to the following:

(A) Reinsurance.

(B) Group insurance.

(C) Pure endowment.

(D) Annuity or reversionary annuity contract.

(E) Uniform amounts of term policy, with no guaranteed nonforfeiture or endowment benefits and with no renewal of guaranteed nonforfeiture or endowment benefits, for a term that lasts no more than 20 years and that expires before the insured becomes age 71, and with premiums payable throughout the policy term.

(F) Decreasing amounts of term policy with no guaranteed nonforfeiture or endowment benefits, with adjusted premiums under subsections (d) and (e) of this section exceeded by adjusted premiums for uniform amounts of term policy, for a term that lasts no more than 20 years and that expires before the insured becomes age 71, and for a policy issued at the same age and for the same initial amount of insurance as originally provided by the policy.

(G) A policy with guaranteed nonforfeiture or endowment benefits with no cash value or present value of a paid-up nonforfeiture benefit at the beginning of a policy year exceeding 2½% of the amount of insurance at the beginning of the policy year.

(H) A policy delivered outside the District of Columbia by an agent of the company.

(2) For this section, the expiration age for joint term life insurance shall be the age of the oldest life when the insurance expires. (June 19, 1934, ch. 672, ch. V, § 5b; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4; June 27, 1960, 74 Stat. 228, Pub. L. 86-530, § 2; Oct. 3, 1962, 76 Stat. 712, Pub. L. 87-738, § 2; 1973 Ed., § 35-705b; Oct. 13, 1978, D.C. Law 2-120, §§ 6 to 8, 25 DCR 1519; Mar. 14, 1985, D.C. Law 5-160, § 3(f), 32 DCR 39; Feb. 24, 1987, D.C. Law 6-192, § 25(e)-(g), 33 DCR 7836; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-501, 35-503, 35-506, 35-509, and 35-528.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the introductory language of (a)(1), and in (d)(6)(C)(iii), (d)(7)(D), (d)(7)(E)(i), (d)(8)(D), (d)(8)(E)(i), (e)(16)(G), (e)(16)(H), (3)(19)(A), (f)(1), (f)(2) and (i)(1).

**Legislative history of Law 2-120.** — See note to § 35-501.

**Legislative history of Law 5-160.** — See note to § 35-531.

**Legislative history of Law 6-192.** — See note to § 35-503.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**References in text.** — “The Life Insurance Amendments Reform Act of 1984,” referred to in subparagraph (A) of paragraph (7) of subsection (h), is D.C. Law 5-160, codified primarily within Chapters 4, 5, and 6 of Title 35.

**Cited in** Office of People’s Counsel v. Public Serv. Comm’n, App. D.C., 520 A.2d 677 (1987).

## § 35-508. Same — Individual deferred annuities.

(a) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts of individual retirement annuities under § 408 of the Internal Revenue Code of 1954 (88 Stat. 959; § 408 of Title 26, United States Code), as now or hereafter amended, premium deposit fund, variable contract, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside the District of Columbia through an agent or other representative of the company issuing the contract.

(b)(1) In the case of contracts issued on or after the operative date of this section as defined in subsection (k) of this section, no contract of annuity, except as stated in subsection (a) of this section, shall be delivered or issued for delivery in the District of Columbia unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner are at least as favorable to the contract holder:

(A) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (d), (e), (f), (g), and (i) of this section;

(B) If a contract provides for a lump-sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any



paid-up annuity benefit as cash surrender benefit of such amount as is specified in subsections (d), (e), (g), and (i) of this section. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of 6 months after demand therefor with surrender of the contract;

(C) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(D) A brief and general statement of the method to be used in calculating any paid-up annuity, cash surrender or death benefits that may be available under the contract and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

(2) Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than \$20 monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(c) The minimum values as specified in subsections (d), (e), (f), (g), and (i) of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection:

(1)(A) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of 3% per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(i) Any prior withdrawals from or partial surrender of the contract accumulated at a rate of interest of 3% per annum; and

(ii) The amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract;

(B) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than 0 and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65% of the net consideration for the 1st contract year and 87½% of the net considerations for the 2nd and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net

consideration for any renewal contract year which exceeds by not more than 2 times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%;

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with 2 exceptions:

(A) The portion of the net consideration for the 1st contract year to be accumulated shall be the sum of 65% of the net consideration for the 1st contract year plus 22½% of the excess of the net consideration for the 1st contract year over the lesser of the net considerations for the 2nd and 3rd contract years; and

(B) The annual contract charge shall be the lesser of \$30 or 10% of the gross annual consideration;

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of \$75.

(d) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(e) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than 1 percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(f) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such

present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of the paid-up annuity benefit be less than the minimum nonforfeiture amount at the time.

(g) For the purpose of determining the benefits calculated under subsections (e) and (f) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

(h) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(i) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(j) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (d), (e), (f), (g), and (i) of this section, additional benefits payable: (1) in the event of total and permanent disability; (2) as reversionary annuity or deferred reversionary annuity benefits; or (3) as other policy benefits additional to life insurance, endowment and annuity benefits; and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(k) After October 13, 1978, any company may file with the Commissioner a written notice of its election to comply with the provisions of this section after



a specified date which is no more than 2 years after such effective date. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be 2 years after October 13, 1978. (1973 Ed., § 35-705c; Oct. 13, 1978, D.C. Law 2-120, § 9, 25 DCR 1519; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-505.

**Legislative history of Law 2-120.** — See note to § 35-501.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**References in text.** — Section 408 of the Internal Revenue Code of 1954, referred to in subsection (a) has been retained under the Internal Revenue Code of 1986.

**Department of Insurance abolished.** — See note to § 35-501.

## § 35-509. Loan provisions in policies.

(a) In the case of ordinary policies issued prior to the operative date of § 35-507 (the standard nonforfeiture law) the loan value referred to in paragraph (6) of subsection (a) of § 35-503 shall be the reserve at the end of the current policy year on the policy and on the dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and of total and permanent disability and additional accidental death benefits, less a sum not more than 2½% of the amount insured by the policy and of any dividend additions thereto (the policy to specify the mortality table and rate of interest adopted for computing such reserve). The policy may provide that such loan may be deferred for not exceeding 6 months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than 2½% of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one fifth of the said reserve may be deducted in case of a loan under the policy, or may provide therein that the deduction may be the said 2½% or the one fifth of the said reserve at the option of the company.

(b) In the case of ordinary policies issued on or after the operative date of § 35-507 (the standard nonforfeiture law) the loan value referred to in paragraph (6) of subsection (a) of § 35-503 shall be the cash surrender value at the end of the current policy year as required by § 35-507. The company shall reserve the right to defer such loan, except when made to pay premiums, for 6 months after application therefor is made. (June 19, 1934, ch. 672, ch. V, § 5c; Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4; 1973 Ed., § 35-705d; Oct. 13, 1978, D.C. Law 2-120, § 9, 25 DCR 1519.)

**Section references.** — This section is referred to in § 35-503.

**Legislative history of Law 2-120.** — See note to § 35-501.

**References in text.** — The “operative date of § 35-507,” referred to in subsections (a) and

(b) of this section, was prescribed by § 2 of the Act of October 13, 1962, 76 Stat. 712, Pub. L. 87-738, which was formerly codified as § 35-507(g). Section 35-507 was rewritten effective March 14, 1985, and no longer contains the “operative date” language.

**§ 35-510. Extension of time for payment of premiums.**

A life company may enter into subsequent agreements in writing with the insured, which need not be attached to the policy, to extend the time for the payment of any premium, or part thereof, upon condition that failure to comply with the terms of such agreement shall lapse the policy, as provided in said agreement or in the policy. Subject to such lien as may be created to secure any indebtedness contracted by the insured, in consideration of such extension, said agreement shall not impair any right existing under the policy. (June 19, 1934, 48 Stat. 1164, ch. 672, ch. V, § 6; 1973 Ed., § 35-706.)

**§ 35-511. Ascertainment of loan indebtedness.**

In ascertaining the indebtedness due upon policy or premium loans the interest, if not paid when due, shall be added to the principal of such loans and shall bear interest at the rate specified in the note or loan agreement. (June 19, 1934, 48 Stat. 1164, ch. 672, ch. V, § 7; 1973 Ed., § 35-707.)

**§ 35-512. Filing and approval of life policy forms.**

A policy of life insurance shall not be issued or delivered in the District until the form of the same has been filed with the Commissioner, nor if the Commissioner gives written notice, within 30 days of such filing, to the company proposing to issue it, showing wherein the form of such policy does not comply with the requirements of the laws of the District, provided that such action of the Commissioner shall be subject to review by a court of competent jurisdiction. (June 19, 1934, 48 Stat. 1164, ch. 672, ch. V, § 8; 1973 Ed., § 35-708; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Department of Insurance abolished.** — **Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**§ 35-513. Policy provisions required by foreign government entities.**

The policies of a life company, not organized under the laws of the District, may contain any provisions prescribed by the laws of the state, territory, district, or country, under which the company is organized. The policies of a life company, organized under the laws of the District, may, when issued or delivered in any state, territory, district, or country, contain any provisions required by the laws of the state, territory, district, or country in which the same are issued or delivered, anything in chapters 3 to 8 of this title to the contrary notwithstanding. (June 14, 1934, 48 Stat. 1164, ch. 672, ch. V, § 9; 1973 Ed., § 35-709.)

**§ 35-514. Group policies — General requirements.**

No policy of group life insurance shall be delivered in the District unless it conforms to 1 of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(A) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of 1 or more subsidiary corporations, and the employees, individual proprietors, and partners of 1 or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control through stock ownership or contract. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership;

(B) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(C) The policy must cover at least 10 employees at date of issue; and

(D) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(A) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of 1 or more subsidiary corporations, and the debtors of 1 or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise;



(B) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(C) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured;

(D) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor or \$25,000, whichever is less, or \$75,000 for mortgage transactions, whichever is less. Notwithstanding the immediately preceding provision, the amount of insurance with respect to a loan commitment incurred to defray educational costs of a student may be in an amount not exceeding the fixed amount committed to be loaned under the loan commitment less the amount of any repayments made on the loan; and

(E) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(A) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both;

(B) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their

insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(C) The policy must cover at least 10 members at date of issue; and

(D) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

(4) A policy issued to the trustees of a fund established by 2 or more employers in the same industry or by 1 or more labor unions, or by 1 or more employers and 1 or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(A) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(B) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(C) The policy must cover at date of issue at least 100 persons; and it must cover an average of not less than 3 persons per employer unit unless the policy is issued to the trustees of a fund established by employers who have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to 1 or more classes of their employees who are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by 1 or more labor unions; and

(D) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

(5) A policy issued to the Mayor of the District of Columbia or to the head of any federal department or independent federal bureau, board, commission, or other federal independent establishment, or to an association of federal employees, as the case may be, covering not less than 10 employees of the government of the District or of the federal government, with or without medical examination, the premium on which is to be paid by the employees and insuring only employees, or any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer; provided, that when the benefits of the policy are offered to all eligible employees, not less than 75% of such employees may be so insured.

(6) A policy issued to an association whose eligible members have the same profession, trade, or occupation which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members, or employees of members, of such association for the benefit of persons other than the association, or any of its officials, representatives, or agents, subject to the following requirements:

(A) The members or employees eligible for insurance under the policy shall be all the members, and all the employees of the members, of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both;

(B) The premium for the policy shall be paid by the policyholder either wholly from the association's funds, or partly from such funds and partly from funds contributed by the insured members or employees specifically for their insurance, or from funds wholly contributed by the insured members or employees specifically for their insurance. A policy on which any part or all of the premium is to be derived from funds contributed by the insured members or employees specifically for their insurance may be placed in force only if at least 60% of the then eligible members or employees or a minimum of 400 members or employees, whichever is less, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members or employees specifically for their insurance must insure all eligible members or employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(C) The policy must cover at least 25 members or employees at date of issuance; and

(D) The amounts of insurance on employees insured under the policy shall be based upon some plan precluding individual selection either by the employees or by the association.

(7) Any policy issued pursuant to this section, except a policy issued to a creditor pursuant to paragraph (2) of this section, or a policy issued to a credit



union pursuant to paragraph (8) of this section, may be extended to insure the dependents of insured persons, or any class or classes thereof, subject to the following requirements:

(A) The premiums for the insurance shall be paid by the policyholder either from the policyholder's funds or from funds contributed by the insured person, or from both. If any part of the premium is to be derived from funds contributed by the insured persons, the insurance with respect to dependents may be placed in force only if at least 75% of the then eligible employees or members of the organization or the association, excluding any as to whose dependents evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the insured persons, all such eligible employees or members of the organization or the association, excluding any as to whose dependents evidence of insurability is not satisfactory to the insurer, must be insured with respect to their dependents;

(B) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, and shall not exceed, with respect to any dependent, 50% of the insurance on the life of such insured person;

(C) Upon termination of the insurance with respect to the spouse of any insured person by reason of such person's termination of employment or membership or death, the spouse insured pursuant to this section shall have the same conversion rights as to the insurance on his or her life as is provided for the insured person under § 35-515;

(D) Notwithstanding the provisions of § 35-515, only 1 certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate; and

(E) For the purposes of this paragraph, the term "dependents" means the spouse and unmarried children of the insured person. The term "children" includes any child who is under 21 years of age and any child who is 21 years of age or older and who is a student within the meaning of § 151(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. § 151(c)(4)) and receives his or her primary support from the insured person or insured person's spouse. The term "children" includes natural children, stepchildren, adopted children, foster children, and any other children under the custody and care of the insured person.

(8) A policy of group life insurance issued to a credit union organized pursuant to the laws of the District of Columbia or pursuant to the Federal Credit Union Act (§ 1751 et seq. of Title 12, United States Code), which credit union shall be deemed the policyholder, to insure members of the credit union for the benefit of persons other than the credit union, subject to the following requirements:

(A) The members eligible for insurance under the policy shall be all of the members of the credit union, or all of any class or classes thereof determined by age, or by membership in the credit union, or both;

(B) The premium for the policy shall be paid by the policyholder, either from the credit union's own funds, or from charges collected from the insured

members specifically for the insurance, or both. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(C) The policy must cover at least 25 members at date of issue; and

(D) The amount of insurance on the life of any member shall not exceed the total amount of his shares and deposits in the credit union or \$5,000, whichever is less. Such policy may be issued either in addition to, or in lieu of, a policy issued pursuant to paragraph (2) of this section.

(9) A policy issued to a duly organized national veterans' organization which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members of such organization for the benefit of persons other than the organization, or any of its officials, representatives, or agents, subject to the following requirements:

(A) The members eligible for insurance under the policy shall be all the members of the organization, or all of any class or classes thereof determined by conditions pertaining to their membership in the organization, or both;

(B) The premium for the policy shall be paid by the policyholder either wholly from the organization's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance, or from funds wholly contributed by the insured members specifically for their insurance. A policy on which any part or all of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 60% of the then eligible members or a minimum of 400 members, whichever is less, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(C) The policy must cover at least 25 members at date of issuance; and

(D) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members, or by the organization. (June 19, 1934, 48 Stat. 1164, ch. 672, ch. V, § 10; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 330, ch. 457, § 1; July 5, 1960, 74 Stat. 315, 316, Pub. L. 86-579, §§ 1-5; Sept. 14, 1961, 75 Stat. 519, Pub. L. 87-249, § 1; Oct. 23, 1962, 76 Stat. 1131, Pub. L. 87-855, §§ 1, 2; Sept. 20, 1966, 80 Stat. 821, Pub. L. 89-594, § 1; 1973 Ed., § 35-710; Aug. 14, 1973, 87 Stat. 304, Pub. L. 93-89, title III, § 301; Feb. 23, 1980, D.C. Law 3-52, § 3, 27 DCR 26; Dec. 10, 1981, D.C. Law 4-55, § 2, 28 DCR 4649; May 10, 1989, D.C. Law 7-231, § 43, 36 DCR 492; Feb. 5, 1994, D.C. Law 10-68, § 31, 40 DCR 6311.)

**Cross references.** — As to provisions relating to amount of credit life, accident, and health insurance, see § 35-1004.

**Section references.** — This section is referred to in §§ 35-515 and 35-1004.

**Legislative history of Law 3-52.** — Law 3-52, the "District of Columbia Insurance Act Amendments of 1979," was introduced in Council and assigned Bill No. 3-53, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 20, 1979, and December 4, 1979, respectively. Signed by the Mayor on December 21, 1979, it was assigned Act No. 3-142 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-55.** — Law 4-55, the "Credit Union Life Insurance Ceiling Amendment Act of 1981," was introduced in Council and assigned Bill No. 4-291, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on September 15, 1981, and September 29, 1981, respectively. Signed by the Mayor on October 19, 1981, it was assigned Act No. 4-96 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-231.** — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-68.** — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Number of employees required for group.** — This section does not manifest a congressional intent that 75 percent of all employees of a government department must be included before the group may be validly insured, and an association of not less than 50 employees can be formed and obtain insurance, although the group does not comprise 75 percent of all employees of the government department. *Shenandoah Life Ins. Co. v. Jordan*, 128 F. Supp. 274 (D.D.C. 1955).

## § 35-515. Same — Required provisions.

No policy of group life insurance shall be delivered in the District unless it contains in substance the following provisions, or provisions which in the opinion of the Commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder; provided, however: (1) that subparagraphs (6) to (10) of this section, inclusive, shall not apply to policies issued to a creditor to insure debtors of such creditor, or to policies issued pursuant to paragraph (8) of § 35-514; (2) that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; (3) that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the Commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required



for individual life insurance policies; and (4) that subject to the terms of the policy any person insured under a group life insurance contract, whether issued before or after August 14, 1973, may make to any person, other than his employer, an absolute or collateral assignment of any or all the rights and benefits conferred on him by any provision of such policy or by law, including specifically, but not by way of limitation, any right to designate a beneficiary or beneficiaries thereunder and any right to have an individual policy issued upon termination either of employment or of said policy of group life insurance; but nothing herein shall be construed to have prohibited an insured from making an assignment of all or any part of his rights and privileges under the policy before August 14, 1973, and, subject to the terms of the policy, an assignment by an insured before or after August 14, 1973, is valid for the purposes of vesting in the assignee all rights and privileges so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment:

(1) A provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period;

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for 2 years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime nor unless it is contained in a written instrument signed by him;

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary;

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage;

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used;

(6) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person

insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding \$250 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured;

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in paragraphs (8), (9), and (10) of this section;

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the 1st premium paid to the insurer, within 31 days after such termination: And provided further, that:

(A) The individual policy shall, at the option of such person, be on any 1 of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(B) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in 1 sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(C) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy;

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 5 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by paragraph (8) of this section, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

(A) The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; and

(B) \$2,000; and

(10) A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with subparagraph (8) or (9) of this section and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the 1st premium therefor has been made. (June 19, 1934, 48 Stat. 1165, ch. 672, ch. V, § 11; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 333, ch. 457, § 2; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-740, § 1; 1973 Ed., § 35-711; Aug. 14, 1973, 87 Stat. 304, Pub. L. 93-89, title III, § 302; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Cross references.** — As to requirement that copy of application be delivered with policy, see § 35-203.

As to effect of false statements in application, see § 35-414.

As to standard provisions in life policies, see § 35-503.

As to provisions prohibited in life policies, see § 35-504.

As to standard provisions for annuity and endowment contracts, see § 35-505.

As to standard provisions for accident and health policies, see § 35-517.

**Section references.** — This section is referred to in § 35-514.

**Effect of amendments.** — D.C. Law 11-

(Act 11-524) substituted "Commissioner" for "Superintendent" twice in the introductory language.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.

**Contestability of individual certificate of insurance.** — Where an insurer is not contesting the group policy, but only the individual certificate of insurance, the certificate is not incontestable when the individual did not live for 2 years after its date of issuance. *Taylor v. American Heritage Life Ins. Co.*, 448 F.2d 1375 (4th Cir. 1971).

## § 35-516. Same — Right to, and notice of, issuance of individual policy.

(a) If any individual insured under a group life insurance policy hereafter delivered in the District becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the 1st premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then, in such event, the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this subsection.



(b) Except as provided in this chapter it shall be unlawful to make a contract of life insurance for a group in the District. (June 19, 1934, ch. 672, ch. V, § 11(a); July 12, 1950, 64 Stat. 333, ch. 457, § 2; 1973 Ed., § 35-711a.)

### § 35-517. Individual accident and sickness policies.

(a) *Filing requirements.* — No policy of insurance against loss resulting from sickness or from bodily injury or death by accident, or both, shall be issued or delivered to any person in the District by any company organized under this or any other law of the District, or, if a foreign or alien company, authorized to do business in the District, including, but not limited to, all Health Maintenance Organizations, Group Hospitalization and Medical Services, Inc., all life insurance companies licensed to do business in the District, and all for-profit as well as nonprofit health insurers issuing or delivering expense incurred accident and sickness health insurance policies and certificates, until a copy of the form thereof, and of the classification of risks and the premium rates appertaining thereto, have been filed with the Commissioner; nor shall it be so issued or delivered until the expiration of 30 days after it has been so filed, unless the Commissioner shall sooner give his written approval thereto.

(b) *Form.* (1) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in the District unless:

(A) The entire money and other considerations therefor are expressed therein;

(B) The time at which the insurance takes effect and terminates is expressed therein;

(C) It purports to insure only 1 person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years and any other person dependent upon the policyholder;

(D) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than 10-point with a lowercase unspaced alphabet length not less than 120-point (the text shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(E) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in subsection (c) of this section, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS," or "EXCEPTIONS AND REDUCTIONS"; provided, that, if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(F) Each such form, including riders and endorsements, shall be identified by a former number in the lower left-hand corner of the 1st page thereof;

(G) It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Commissioner;

(H) It contains no provision which would restrict access to psychologists or optometrists. When a policy relating to health insurance requires payment or reimbursement for services which may be performed by a duly licensed psychologist or optometrist, any person covered by the policy shall be free to select and have direct access to such psychologist or optometrist without supervision or referral by a practitioner of the healing art and shall be entitled, under the policy, to have payment or reimbursement made for services performed;

(I) For a policy issued or renewed after April 15, 1995, it contains a provision covering a minor grandchild, niece, or nephew of an employee of the District of Columbia if the minor grandchild, niece, or nephew is under the primary care of the insured, and if the legal guardian of the minor grandchild, niece, or nephew, if other than the insured, is not covered by an accident or sickness policy. For the purposes of this paragraph, the term "primary care" means that the insured provides food, clothing, and shelter, on a regular and continuous basis, for the minor grandchild, niece, or nephew during the time that the District of Columbia public schools are in regular session; and

(J) For a policy issued or renewed after April 15, 1996, it contains a provision covering a minor grandchild, niece, or nephew under the primary care of the insured, and if the legal guardian of the minor grandchild, niece, or nephew, if other than the insured, is not covered by an accident or sickness policy. For the purposes of this paragraph, the term "primary care" means that the insured provides food, clothing, and shelter, on a regular and continuous basis, for the minor grandchild, niece, or nephew during the time that the District of Columbia public schools are in regular session.

(2) If any policy is issued by an insurer domiciled in the District for delivery to a person residing in another jurisdiction, and if the official having responsibility for the administration of the insurance laws of such other jurisdiction shall have advised the Commissioner that any such policy is not subject to approval or disapproval by such official, the Commissioner may by ruling require that such policy meet the standards set forth in paragraph (1) of this subsection and in subsection (c) of this section.

*(c) Provisions.*

(1) *Required provisions.* — Except as provided in paragraph (3) of this subsection each such policy delivered or issued for delivery to any person in the District shall contain the provisions specified in this paragraph in the words in which the same appear in this paragraph; provided, however, that the insurer may, at its option, substitute for 1 or more of such provisions corresponding provisions of different wording approved by the Commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary.

Such provisions shall be preceded individually by the caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve:

(A) A provision as follows:

“ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.”.

(B)(i) A provision as follows:

“TIME LIMIT ON CERTAIN DEFENSES: After 3 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 3-year period.”.

(ii) (The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 3-year period, nor to limit the application of subparagraphs (A), (B), (C), (D), and (E) of paragraph (2) of this subsection in the event of misstatement with respect to age or occupation or other insurance.)

(iii) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or in the case of a policy issued after age 44, for at least 5 years from its date of issue; may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer’s option) under the caption “INCONTESTABLE.”

“After this policy has been in force for a period of 3 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.”

“No claim for loss incurred or disability (as defined in the policy) commencing after 3 years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.”

(C)(i) A provision as follows:

“GRACE PERIOD: A grace period of ..... (insert a number not less than ‘7’ for weekly premium policies, ‘10’ for monthly premium policies, and ‘31’ for all other policies) days will be granted for the payment of each premium falling due after the 1st premium, during which grace period the policy shall continue in force.”.

(ii) A policy which contains a cancellation provision may add, at the end of the above provision, “Subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.”.

(iii) A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision;

“Unless not less than 5 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown



by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.”.

(D)(i) A provision as follows:

“REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement.”.

(ii) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or in the case of a policy issued after age 44, for at least 5 years from its date of issue.

(E)(i) A provision as follows:

“NOTICE OF CLAIM: Written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.”.

(ii) In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the 1st and 2nd sentences of the above provision:

“Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given.”.

(F) A provision as follows:

“CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.”

(G) A provision as follows:

“PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required.”

(H) A provision as follows:

“TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.”

(I)(i) A provision as follows:

“PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured’s death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.”

(ii) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

“If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity up to an amount not exceeding \$...... (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

“Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account

of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

(J) A provision as follows:

"**PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

(K) A provision as follows:

"**LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished."

(L)(i) A provision as follows:

"**CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

(ii) The 1st clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(2) *Other provisions.* — Except as provided in paragraph (3) of this subsection, no such policy delivered or issued for delivery to any person in the District shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this paragraph; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this paragraph or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve:

(A) A provision as follows:

"**CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess prorata unearned premium from the date of change of occupation or from the policy anniversary



date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the official having supervision of insurance in the jurisdiction where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such jurisdiction prior to the occurrence of the loss or prior to the date of proof of change in occupation.”.

(B) A provision as follows:

“MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.”.

(C)(i) A provision as follows:

“OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of \$...... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.”.

(ii) Or, in lieu thereof: “Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.”.

(D)(i) A provision as follows:

“INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the ‘like amount’ of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.”.

(ii) If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase “—EXPENSE INCURRED BENEFITS”. The insurer may, at its option, include in this provision a definition of “other valid coverage,” approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to

regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no 3rd party liability coverage shall be included as "other valid coverage."

(E)(i) A provision as follows:

"INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(ii) If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase "—OTHER BENEFITS". The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no 3rd-party liability coverage shall be included as "other valid coverage."

(F)(i) A provision as follows:

"RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis,

shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.”.

(ii) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of “valid loss-of-time coverage,” approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other jurisdiction of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen’s compensation or employer’s liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations;

(G) A provision as follows:

“UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.”.

(H) A provision as follows:

“CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than 5 days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the official having supervision of insurance in the jurisdiction where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.”.



(I) A provision as follows:

“CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the jurisdiction in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.”.

(J) A provision as follows:

“ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured’s commission of or attempt to commit a felony or to which a contributing cause was the insured’s being engaged in an illegal occupation.”.

(K) A provision as follows:

“INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured’s being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.”.

(3) *Inapplicable or inconsistent provisions.* — If any provision of this subsection is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(4) *Order.* — The provisions which are the subject of paragraphs (1) and (2) of this subsection, or any corresponding provisions which are used in lieu thereof in accordance with such paragraphs, shall be printed in the consecutive order of the provisions in such paragraphs or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

(5) *Third-party rights.* — The word “insured,” as used in this section, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

(6) *Rules and regulations.* — The Council of the District of Columbia may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this section as are necessary, proper or advisable to the administration of this section. This provision shall not abridge any other authority granted the Commissioner by law.

(d) *Conforming to statutory requirements.*

(1) *Provisions not subject to requirements.* — No policy provision which is not subject to subsection (c) of this section shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this section.

(2) *Violations and conflicts.* — A policy delivered or issued for delivery to any person in the District in violation of this section shall be held valid but

shall be construed as provided in this section. When any provision in a policy subject to this section is in conflict with any provision of this section, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of this section.

(e) *Applications.* (1) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in the District shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within 15 days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(2) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(3) The falsity of any statement in the application for any policy covered by this section may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

(f) *Waiver of insurer's rights.* — The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

(g) *Limitations on coverage.* — If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

(h) *Exceptions.* — Except as provided in § 35-530, nothing in this section shall apply to or affect:

(1) Any policy of group accident, group health, or group accident and health insurance; or

(2) Life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as:

(A) Provide additional benefits in case of death or dismemberment or loss of sight by accident; or

(B) Operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract; provided, that no such supplemental contract shall be issued or delivered to any person in the District unless and until a copy of the form thereof has been submitted to and approved by the Commissioner under such reasonable rules and regulations as the Council of the District of Columbia shall make concerning the provisions in such contracts and their submission to and approval by him. (June 19, 1934, 48 Stat. 1166, ch. 672, ch. V, § 12; July 12, 1950, 64 Stat. 335, ch. 457, § 3; July 16, 1953, 67 Stat. 162, ch. 196, § 1; 1973 Ed., § 35-712; Feb. 19, 1976, D.C. Law 1-46, § 2, 22 DCR 4680; Feb. 11, 1982, D.C. Law 4-66, § 2(a), 28 DCR 5040; Aug. 25, 1994, D.C. Law 10-158, § 2, 41 DCR 4881; Apr. 18, 1996, D.C. Law 11-110, § 36, 43 DCR 530; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Cross references.** — As to health and accident companies, see § 35-202.

As to standard provisions for life policies, see § 35-503.

As to standard provisions for annuity and endowment contracts, see § 35-505.

As to standard provisions for group life policies, see § 35-515.

As to health and accident policies issued by companies operating under Fire and Casualty Act, see § 35-1532.

**Section references.** — This section is referred to in § 35-1532.

**Effect of amendments.** — D.C. Law 11-110 validated a previously made stylistic change in (b)(1)(G).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in (a), once in (b)(1)(G), twice in (b)(2), twice in the introductory language of (c)(1), twice in the introductory language of (c)(2), twice in (c)(2)(D)(ii), twice in (c)(2)(E)(ii), twice in (c)(2)(F)(ii), and once in (c)(3), (c)(6) and (h)(2)(B).

**Legislative history of Law 1-46.** — Law 1-46, the “Access to Psychologists and Optometrists Act,” was introduced in Council and assigned Bill No. 1-86, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on October 7, 1975, and October 21, 1975, respectively. Signed by the Mayor on November 7, 1975, it was assigned Act No. 1-64 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-66.** — Law 4-66, the “Access to Clinical Psychologists and Optometrists Act of 1981,” was introduced in Council and assigned Bill No. 4-160, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 13, 1981, and October 27, 1981, respectively. Signed by the Mayor on November 9, 1981, it was assigned Act No. 4-112 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-158.** — Law 10-158, the “Primary Caretaker Insurance Coverage for Minors Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-112, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-274 and transmitted to both Houses of Congress for its review. D.C. Law 10-158 became effective on August 25, 1994.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.



**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(276) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-501.

**Failure to disclose past treatment.** — An insured's failure to disclose past medical or surgical treatment precluded recovery of hospitalization benefits under policy, where failure to disclose such fact was intended to deceive and materially affected acceptance of risk. *Turner v. National Hospitalization, Inc.*, App. D.C., 52 A.2d 274 (1947).

**Burden of proof of such failure.** — The insurer has the burden of proving that the right to recovery on a hospitalization policy is barred by insured's failure to disclose past treatment in application inquiring as to past medical or surgical treatment. *Turner v. National Hospitalization, Inc.*, App. D.C., 52 A.2d 274 (1947).

## § 35-518. Prohibited activities — Securities operations.

No life company doing business in the District shall issue in the District, nor permit its general agents, agents, officers, solicitors, or employees to issue or deliver in the District, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board or other contracts of any kind promising returns and profits as an inducement to insure; and no life company shall be authorized to do business in the District which issues or permits its general agents, agents, officers, solicitors, or employees to issue in the District or in any state or territory agency company stock or other capital stock, or benefit certificates or shares in any common-law corporations, or securities or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance; and no corporation or stock company acting as agent of a life company nor any of its general agents, agents, officers, solicitors, or employees shall be permitted to sell, agree, or offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature promising returns and profits as an inducement to insurance or in connection therewith. It shall be the duty of the Commissioner, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending; provided, however, that the action of the Commissioner in this regard shall be subject to appeal and review in the form and manner prescribed in § 35-427. (June 19, 1934, 48 Stat. 1173, ch. 672, ch. V, § 13; 1973 Ed., § 35-713; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11-

(Act 11-524) substituted "Commissioner" for "Superintendent" twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.

### § 35-519. Same — Misrepresentations.

No life company doing business in the District, and no officer, director, general agent, agent, or solicitor thereof, broker, or any other person shall make, issue, or circulate, or cause to be issued or circulated, any estimate, illustration, circular, or statement of any sort misrepresenting the terms of any policy issued or to be issued by it or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such corporation or officer, director, general agent, agent, or solicitor thereof, broker or any other person, firm, association, or corporation make any misrepresentation to any person insured in any company for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit, or surrender his insurance. It shall be the duty of the Commissioner, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending; provided, however, that the action of the Commissioner in this regard shall be subject to appeal and review in the form and manner prescribed in § 35-427. (June 19, 1934, 48 Stat. 1174, ch. 672, ch. V, § 14; 1973 Ed., § 35-714; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to the revocation or suspension of agent's or broker's license, see § 35-426.

**Effect of amendments.** — D.C. Law 11-

(D.C. Act 11-524) substituted "Commissioner" for "Superintendent" twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.

### § 35-520. Same — Discriminations.

No life insurance corporation doing business in the District shall make or permit any discriminations between individuals of the same class or of equal expectation of life, in the amount of payment or return of premiums or rates charged for policies of insurance, including endowment policies and annuity contracts, or in the dividends or other benefits payable thereon, or in any of the terms or conditions of the policy; nor shall any such company permit or agent thereof offer to make any contract of insurance, endowment policy, or annuity contract, or agreement as to such contracts other than as plainly expressed in the policy issued thereon, nor shall any such company or officer, agent, solicitor, or representative thereof pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to any person to insure, or give, sell, or purchase, or offer to give, sell, or purchase as such inducement or in connection with such insurance, endowment policy, or annuity contract, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profit accruing thereon, or any valuable consideration or inducement whatever not specified in the policy,

nor shall any person knowingly receive any such inducement, any rebate of premium, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever, not specified in the policy. No person shall be excused from attending and testifying and producing any books, papers, or other documents before any court or magistrate, upon any investigation, proceeding, or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Nothing in this section shall be so construed as to forbid a company, transacting industrial life insurance, from returning to policyholders, who have made premium payments for a period of at least 1 year, directly to the company at its home or distant offices, a percentage of such a premium which the company would have paid for the collection thereof. (June 19, 1934, 48 Stat. 1174, ch. 672, ch. V, § 15; 1973 Ed., § 35-715.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to provisions prohibited in life policies, see § 35-504.

**Commission-splitting not prohibited.** — An insurance broker is not prohibited by this

section from splitting commissions with an insurance solicitor where the arrangement is otherwise valid. *Werber v. Wallop*, App. D.C., 46 A.2d 110 (1946).

**Cited in** *International Underwriters, Inc. v. Boyle*, App. D.C., 365 A.2d 779 (1976).

## § 35-521. Rights of parties under life policies.

(a) When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person; provided, that subject to the statute of limitations the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice by or in behalf of a creditor of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specifications of the amount claimed.



(b) A charitable, benevolent, educational, governmental, or religious institution that is described in § 501(c)(3) or § 170(b)(1)(A) of the Internal Revenue Code or a trust for the benefit of the institution that is qualified as a charitable remainder trust under § 664 or a pooled income fund under § 642(c)(5) of the Internal Revenue Code may acquire an insurable interest in the life of an individual if:

(1) The institution or trust is designated irrevocably as the beneficiary of the insurance proceeds or designated as the owner of the life insurance policy, or both;

(2) The application for the insurance contract is procured and signed by the individual whose life is to be insured; and

(3) Notwithstanding paragraph (1) of this subsection, the insured pays the premiums for the insurance policy for at least 3 years following the issuance of the policy.

(c) Subsection (b) of this section does not prohibit the insured from retaining all ownership rights conferred by the insurance policy, except the right to loan or borrow value during the premium-paying period or at maturity. (June 19, 1934, 48 Stat. 1175, ch. 672, ch. V, § 16; Aug. 1, 1947, 61 Stat. 711, ch. 427; 1973 Ed., § 35-716; Mar. 16, 1995, D.C. Law 10-211, § 2, 41 DCR 8027.)

**Effect of amendments.** — D.C. Law 10-211 added the “(a)” designation and (b) and (c).

**Legislative history of Law 10-211.** — Law 10-211, the “Charitable Gift of Life Insurance Proceeds Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-348, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-348 and transmitted to both Houses of Congress for its review. D.C. Law 10-211 became effective on March 16, 1995.

**References in text.** — Sections 501(c)(3), 170(b)(1)(A), 664 and 642(c)(5) of the Internal Revenue Code, referred to in (b), are codified as 26 U.S.C. §§ 501(c)(3), 170(b)(1)(A), 664 and 642(c)(5), respectively.

**Application of Law 10-211.** — Section 3 of D.C. Law 10-211 provided that the act shall be applied retroactively, thereby validating any insurance contract authorized under this act if the individual on whose life the insurance contract was taken is alive on March 16, 1995, even though the insurance contract was entered into before March 16, 1995, and the beneficiary or owner of the policy continues to pay the premiums until maturity.

**Meaning of section.** — This section means that the lawful beneficiary or his executors or administrators shall be entitled to the proceeds against creditors and representatives of insured. *Kindleberger v. Lincoln Nat'l Bank*, 155 F.2d 281 (D.C. Cir.), cert. denied, 329 U.S. 803, 67 S. Ct. 495, 91 L. Ed. 686 (1946).

**Section does not impair obligation of contract.** — Where this section is expressly made applicable to policies previously issued, it is controlling over a contrary provision of a policy issued before the enactment of this section, and the application of this section does not impair the obligation of the contract embodied in the policy. *Kindleberger v. Lincoln Nat'l Bank*, 155 F.2d 281 (D.C. Cir.), cert. denied, 329 U.S. 803, 67 S. Ct. 495, 91 L. Ed. 686 (1946).

**Applicability.** — This section only applies if a policy is effected by a person: (1) on his own life; or (2) on the life of another in favor of some person other than himself. *Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership*, 163 Bankr. 615 (Bankr. D.D.C. 1993).

In a dispute to determine personal or corporate beneficiaries to an insurance policy, section did not apply to protect personal beneficiaries from an action by trustee on behalf of the partnership — which was not a creditor of insured — regarding the proceeds. *Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership*, 163 Bankr. 615 (Bankr. D.D.C. 1993).

**Standing to sue.** — A change in beneficiary is subject to a fraudulent conveyance action by any creditor who would have had an interest in the proceeds but for the transfer. *Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership*, 163 Bankr. 615 (Bankr. D.D.C. 1993).

**Entitlement of beneficiary's representatives.** — When a policy has matured because of insured's death, the claim of the beneficiary to the proceeds cannot be defeated and, if benefi-

ciary has not survived, the beneficiary's executors or administrators are entitled under this section to the proceeds, as against the creditors and representatives of the insured. *Kindleberger v. Lincoln Nat'l Bank*, 155 F.2d 281 (D.C. Cir.), cert. denied, 329 U.S. 803, 67 S. Ct. 495, 91 L. Ed. 686 (1946).

Where a life policy provided that the proceeds thereof were to be paid to the insured's wife, "if

living; otherwise to his executors, administrators or assigns," and where the insured died 15 months after his wife's death without having changed the beneficiary clause, the insured's executors, rather than the wife's administrators, were entitled to the proceeds of the policy notwithstanding this section. *Horning v. Lindsay*, 169 F.2d 963 (D.C. Cir. 1948).

## § 35-522. Exemption from legal process — Disability benefits.

No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but the provisions of this section shall not affect the assignability of any such disability benefit otherwise assignable, nor shall this section apply to any money income disability benefit in an action to recover for necessities contracted for after the commencement of disability covered by the disability clause or contract allowing such money income benefit. (June 19, 1934, 48 Stat. 1175, ch. 672, ch. V, § 16a; 1973 Ed., § 35-717.)

**Purpose of section.** — So far as general creditors are concerned, the purpose of this section is clear, with the exceptions stated, to make the disposition of these funds a matter solely for the insured's judgment. *Schlaefter v. Schlaefter*, 112 F.2d 177 (D.C. Cir. 1940).

Congress considered it preferable for creditors to go unpaid rather than depriving the debtor and his dependents of this means of

support when the debtor's earning capacity was cut off. *Schlaefter v. Schlaefter*, 112 F.2d 177 (D.C. Cir. 1940).

**Alimony and support payments.** — Liability for alimony and support payments to a divorced wife is not a "debt or liability" within the meaning of this exemption. *Schlaefter v. Schlaefter*, 112 F.2d 177 (D.C. Cir. 1940).

## § 35-523. Same — Group life policy or proceeds.

No policy of group life insurance, nor the proceeds thereof when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts. (June 19, 1934, 48 Stat. 1176, ch. 672, ch. V, § 17; 1973 Ed., § 35-718.)

## § 35-524. Fraudulent statements or representations against companies.

Any agent, broker, examining physician, or other person who shall knowingly or willfully make any false or fraudulent statement or representation in

or with reference to any application for life insurance, or who shall make any such statement for the purpose of obtaining any fee, commission, money, or benefit from or in any company transacting business under chapters 3 to 8 of this title shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1176, ch. 672, ch. V, § 18; 1973 Ed., § 35-719.)

**Section references.** — This section is referred to in § 35-4703.

### **§ 35-525. Authority to hold proceeds under trust or agreement.**

Any life company licensed under the laws of the District shall have power to hold the proceeds of any policy issued by it under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors or beneficiaries other than the policyholder as shall have been agreed to in writing by such company and the policyholder. Such insurance company shall not be required to segregate funds so held, but may hold them as a part of its general corporate assets. (June 19, 1934, 48 Stat. 1176, ch. 672, ch. V, § 19; 1973 Ed., § 35-720.)

### **§ 35-526. Calculations of premiums and reserves.**

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in § 35-501(c)(3) and (d). Provided that for any life insurance policy issued on or after January 1, 1987, for which the gross premium in the 1st policy year exceeds that of the 2nd year and for which no comparable additional benefit is provided in the 1st year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in § 35-501(c)(5), ignoring subsection (c)(5)(B) of § 35-501. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with § 35-501(c)(5), including subsection (c)(5)(B) of § 35-501, and the minimum reserve calculated in accordance with



this section. (June 19, 1934, 48 Stat. 1176, ch. 672, ch. V, § 20; 1973 Ed., § 35-721; Oct. 13, 1978, D.C. Law 2-120, § 10, 25 DCR 1519; Mar. 14, 1985, D.C. Law 5-160, § 3(g), 32 DCR 39.)

**Section references.** — This section is referred to in § 35-501.

**Legislative history of Law 2-120.** — See note to § 35-501.

**Legislative history of Law 5-160.** — See note to § 35-531.

**Editor's notes.** — References in D.C. Law

5-160 in § 35-501 and in this section have been translated accurately to reflect the D.C. Code numbering system for § 35-501(c). It should be noted, however, that the numbering system used by the D.C. Code and the numbering system used by the Organic Law for § 35-501(c) differ markedly.

## § 35-527. Acceptance and recordation of premiums on industrial life or sick-benefit policies.

(a) No industrial insurance company or agent thereof shall accept any money in payment of premiums which are in arrears on any industrial life or industrial sick-benefit insurance policy which has lapsed and which the insured seeks to reinstate, unless such payment shall amount at least to the total of all premiums in arrears or unless such payment shall, under the regulations of the company, make the policy immediately eligible for reinstatement, subject only to evidence of insurability.

(b) Every current premium shall be correctly recorded by the agent or by the company in the premium receipt book of the insured at the time the premium is paid.

(c) Every advance premium paid by an industrial life or industrial sick-benefit policyholder shall be recorded in the receipt book of the insured in exactly the same manner as current premiums are recorded, and accurate entry thereof shall be made in the record book of the agent; provided, however, that failure so to do shall not invalidate the policy. (June 19, 1934, ch. 672, ch. V, § 21; May 4, 1950, 64 Stat. 104, ch. 157, § 7; 1973 Ed., § 35-722.)

## § 35-528. Industrial life policies — Required provisions.

(a) No policy of industrial life insurance shall be delivered or issued for delivery in the District unless it contains in substance the following provisions, or provisions which in the opinion of the Commissioner are more favorable to the policyholders:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company;

(2) A provision that the insured is entitled to a grace period of at least 28 days within which the payment of any premiums after the first may be made, and during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium is paid, the amount of such premium may be deducted from any amount payable under the policy in settlement;

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be

incontestable after it has been in force during the lifetime of the insured for a period of not more than 2 years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in time of war, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; if a copy of the application be attached to the policy, a provision that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement or statements shall be used in defense of a claim under the policy unless contained in the attached written application;

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of any other person considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue;

(5) If the policy is a participating policy, a provision indicating the conditions under which the company shall periodically ascertain and apportion any divisible surplus accruing to the policy;

(6) A provision for nonforfeiture benefits and cash surrender values in accordance with the requirements of § 35-506 or § 35-507;

(7) A provision specifying the options, if any, to which the policyholder is entitled in the event of default in a premium payment;

(8) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and cancelled, the policy may be reinstated within 2 years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 per centum per annum payable annually;

(9) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death; and

(10) Title on the face and on the back of the policy briefly describing its form.

(b) Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall, to that extent, not be incorporated therein; and any such policy may be issued or delivered in the District which in the opinion of the Commissioner contains provisions on any 1 or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies issued or granted in exchange for lapsed or surrendered policies. Nothing contained in paragraph (3) of subsection (a) of this section shall apply to applications for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided

in the policy with respect to the original issue. (June 19, 1934, ch. 672, ch. V, § 22; May 4, 1950, 64 Stat. 104, ch. 157, § 7; 1973 Ed., § 35-723; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the introductory language of (a) and in (b).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.

## § 35-529. Same — Prohibited provisions.

No policy of industrial life insurance shall be delivered or issued for delivery, in the District, if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than 3 years after the cause of action shall accrue;

(2) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy, of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision;

(3) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof;

(4) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy;

(5) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the payment of any benefits other than in lawful money of the United States;

(6) A provision whereby the benefits or any part thereof accruing under such policy upon the death of a person insured may be paid to any designated undertaker or undertaking firm or corporation or to any person or persons engaged in or connected with such business, without the written consent of the person or persons to whom such benefits would otherwise be paid, or so as in any way to deprive the personal representative or family of the deceased of the advantages of competition in procuring and purchasing supplies and services in connection with the burial of the person insured; or

(7) A provision that the liability of the company by reason of the insured's death shall be limited to less than the face amount of the policy if the death of the insured results from a specified kind or character of disease. (June 19, 1934, ch. 672, ch. V, § 23; May 8, 1950, 64 Stat. 104, ch. 157, § 7; 1973 Ed., § 35-724.)



### § 35-530. Access to psychologists or optometrists under group health insurance policy.

(a) No policy of group health insurance shall be delivered or issued in the District of Columbia or be issued or amended to cover any resident of the District of Columbia if it contains a provision which would restrict access to psychologists or optometrists. When a policy relating to group health insurance requires payment or reimbursement for services which may be performed by a duly licensed psychologist or optometrist, any person covered by the policy shall be free to select and have direct access to such psychologist or optometrist without supervision or referral by a practitioner of the healing art and shall be entitled under the policy to have payment or reimbursement made for services performed.

(b) No policy of group health insurance shall be delivered or issued in the District or be issued or amended to cover any resident of the District if it does not contain a provision which:

(1) For a policy issued or renewed after April 15, 1995, covers a minor grandchild, niece, or nephew of an employee of the District of Columbia if the minor grandchild, niece, or nephew is under the primary care of the insured, and if the legal guardian of the minor grandchild, niece, or nephew, if other than the insured, is not covered by an accident or sickness policy. For the purposes of this paragraph, the term "primary care" means that the insured provides food, clothing, and shelter, on a regular and continuous basis, for the minor grandchild, niece, or nephew during the time that the District of Columbia public schools are in regular session; and

(2) For a policy issued or renewed after April 15, 1996, covers a minor grandchild, niece, or nephew under the primary care of the insured, and if the legal guardian of the minor grandchild, niece, or nephew, if other than the insured, is not covered by an accident or sickness policy. For the purposes of this paragraph, the term "primary care" means that the insured provides food, clothing, and shelter, on a regular and continuous basis, for the minor grandchild, niece or nephew during the time that the District of Columbia public schools are in regular session. (June 19, 1934, 48 Stat. 1156, § 24, as added Feb. 11, 1982, D.C. Law 4-66, § 2(b), 28 DCR 5040; Aug. 25, 1994, D.C. Law 10-158, § 3, 41 DCR 4881.)

**Section references.** — This section is referred to in §§ 35-517 and 35-4703.

**Legislative history of Law 4-66.** — See note to § 35-517.

**Legislative history of Law 10-158.** — See note to § 35-517.

### § 35-531. Policy language simplification standards.

(a) Except as provided under § 35-533, no policy forms shall be delivered or issued for delivery in the District of Columbia after the operative date of this section, unless the forms qualify under the following standards;

(1) The text of the form scores at least 40 on the Flesch reading ease test presented to the Commissioner by the National Association of Insurance

Commissioners after 1980 or on another comparable test described in subsection (c) of this section.

(2) The forms shall be printed in at least 10-point type and shall be 1-point leaded.

(3) The style, the arrangement, and the overall appearance of the form shall not unduly highlight a portion of the text, an endorsement, or a rider.

(4) If the policy has more than 3,000 words on 3 pages or has more than 3 pages, then the form shall contain a table of contents or an index of the principal portions of the text.

(b) A Flesch reading ease test score shall be measured by the following method:

(1)(A) For forms containing no more than 10,000 words, the entire form shall be analyzed.

(B) For policy forms containing more than 10,000 words, the readability of 2 different 200 word samples, per page of text, may be analyzed instead of the entire form.

(C) The samples shall be separated by at least 20 printed lines.

(2)(A) The number of words and sentences shall be counted and the total number of words divided by the number of sentences.

(B) The quotient shall be multiplied by 1.015.

(3)(A) The total number of syllables shall be counted and divided by the total number of words.

(B) The quotient shall be multiplied by 84.6.

(4) The sum of the products described in paragraphs (2) and (3) of this subsection, subtracted from 206.835, equals the Flesch reading ease score.

(5) For paragraphs (2), (3), and (4) of this subsection, the following shall apply:

(A) A contraction, hyphenated word, number, and isolated letter, when separated in the text by spaces shall be counted as 1 word.

(B) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence.

(C) The following shall not be counted in computations described in this subsection:

(i) The company name and address.

(ii) The policy name, number, or title.

(iii) The table of contents and index.

(iv) The captions and subchapters.

(v) The specification pages, schedules, or tables.

(vi) Policy language drafted to conform to law or a collectively bargained agreement.

(vii) Policy language which is medical terminology or defined in the policy.

(D) The company shall identify the language exempted under subparagraph (C) of this paragraph and certify, in writing, that the language should be exempted under subparagraph (C) of this paragraph.

(c) Any other reading test may be approved by the Commissioner as an alternative to the Flesch reading ease test if the alternative is comparable to the Flesch reading ease test.

(d)(1) Filings of forms shall be accompanied by a certificate signed by an officer of the company and stating that the form scored successfully on the test or that the score was inadequate but should be approved under § 35-532.

(2) The Commissioner may require the submission of information to verify the certification described in paragraph (1) of this subsection.

(e) At the option of the company, riders, endorsements, applications, and other forms made part of the policy form may be scored separately or as part of the policy.

(f)(1) A form complying with subsection (a) of this section shall be approved if the form protects policyholders and claimants at least as favorably as laws which otherwise would invalidate the use of the forms.

(2) A policy written in a language other than English and used in the District of Columbia shall be considered in compliance with subsection (a)(1) of this section if the company certifies that the policy has been translated from a policy written in English and complying with subsection (a)(1) of this section. (June 19, 1934, ch. 672, ch. V, § 25, as added Mar. 14, 1985, D.C. Law 5-160, § 3(h), 32 DCR 39; Feb. 24, 1987, D.C. Law 6-192, § 25(h), 33 DCR 7836; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(j), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-532, 35-533, 35-535, 35-536, and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a)(1), (c), and (d)(2).

**Legislative history of Law 5-160.** — Law 5-160, the “Life Insurance Amendments Reform Act of 1984,” was introduced in Council and assigned Bill No. 5-471, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-225 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-192.** — See note to § 35-503.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.

## § 35-532. Commissioner’s review of test.

(a) The Commissioner, in his discretion, may, under subsection (b) of this section, permit the use of a form that scores inadequately under § 35-531(a)(1).

(b) Before the Commissioner permits the use of inadequately scoring forms, the Commissioner shall find that:

(1) A lower score more accurately reflects the readability of the form.

(2) The particular nature of the form or of a type of form warrants a lower passing score than required by § 35-531(a)(1).

(3) Policy language drafted to conform with state law or state agency interpretation of the law has impaired the readability of the rest of the policy or has otherwise lowered the score for the rest of the policy. (June 19, 1934, ch. 672, ch. V, § 26, as added Mar. 14, 1985, D.C. Law 5-160, § 3(h), 32 DCR 39; Feb. 24, 1987, D.C. Law 6-192, § 25(i), 33 DCR 7836; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)



**Section references.** — This section is referred to in §§ 33-531, 33-533, 33-535, 35-536, and 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-531.

**Legislative history of Law 6-192.** — See note to § 35-503.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.

## § 35-533. Applicability of §§ 35-531 through 35-536.

(a) Except as provided in subsection (b) of this section, §§ 35-531 through 35-536 shall apply to all policies used in the District of Columbia.

(b) Sections 35-531 through 35-536 shall not apply to the following:

(1) A policy which is a security under federal legislative jurisdiction.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a group policy covering 1,000 or more lines when issued, other than a group credit life insurance policy or a group credit health insurance policy.

(B) No certificate issued pursuant to a group policy used in the District of Columbia may be exempt.

(3) A group annuity contract which finances pension, profit-sharing, or deferred compensation plans.

(4) A form used in connection with a contractual provision for a policy on a form permitted to be issued before the approval dates in § 35-536 for similar forms.

(5) The renewal of a policy used before the approval dates in § 35-536 for similar forms. (June 19, 1934, ch. 672, ch. V, § 27, as added Mar. 14, 1985, D.C. Law 5-160, § 3(h), 32 DCR 39; Feb. 24, 1987, D.C. Law 6-192, § 25(j), 33 DCR 7836.)

**Section references.** — This section is referred to in §§ 35-531, 35-536, and 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-531.

**Legislative history of Law 6-192.** — See note to § 35-503.

## § 35-534. Regulations.

The Mayor shall issue rules to implement the provisions of this chapter pursuant to subchapter I of Chapter 15 of Title 1. (June 19, 1934, ch. 672, ch. V, § 28, as added Mar. 14, 1985, D.C. Law 5-160, § 3(h), 32 DCR 39.)

**Section references.** — This section is referred to in §§ 35-533, 35-535, 35-536, and 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-531.

## § 35-535. Construction of §§ 35-531 through 35-536.

Sections 35-531 through 35-536 shall not be construed to invalidate a law permitting the use of a policy form which has been filed for the period required by local legislation governing the forms of policies. (June 19, 1934, ch. 672, ch. V, § 29, as added Mar. 14, 1985, D.C. Law 5-160, § 3(h), 32 DCR 39.)

**Section references.** — This section is referred to in §§ 35-533, 35-536, and 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-531.

## § 35-536. Operative dates of §§ 35-531 through 35-536.

(a)(1) Except as described in § 35-533, §§ 35-531 through 35-536 apply to policy forms filed 2 years after March 14, 1985.

(2) No form shall be used in the District of Columbia 5 years after March 14, 1985, unless the form complies with § 35-531 or unless the Commissioner approves the form under § 35-532.

(3)(A) A form permitted to be used before 5 years after March 14, 1985, and complying with § 35-531 need not be refiled to be approved under either § 35-531 or § 35-532.

(B) The forms described in subparagraph (A) of this paragraph may be used in the District of Columbia after the company files with the Commissioner a list of the forms used by the company and qualifying for the subparagraph (A) exception, the form number for each form, and, for each form, the certificate described in § 35-531(d).

(b) For individual forms and in the discretion of the Commissioner, the Commissioner may extend the deadlines described in subsection (a) of this section. (June 19, 1934, ch. 672, ch. V, § 30, as added Mar. 14, 1985, D.C. Law 5-160, § 3(h), 32 DCR 39; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-533, 35-535, and 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-531.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-501.

**Department of Insurance abolished.** — See note to § 35-501.

CHAPTER 6. DOMESTIC LIFE COMPANIES.

- |  |   |
|--|---|
| <p>Sec.</p> <p>35-601. Formation — Required contents of articles of incorporation.</p> <p>35-602. Same — Filing, notice and bond requirements.</p> <p>35-603. Same — Corporate powers during completion of organization; issuance of certificate of authority.</p> <p>35-604. Same — Authority to solicit stock subscriptions or insurance applications.</p> <p>35-605. Same — Disposition of sums paid upon stock subscriptions.</p> <p>35-606. Same — Examination of company; revocation and reinstatement of company's permit or agent's authority.</p> <p>35-607. Same — Time limitation for issuance of policies.</p> <p>35-608. Minimum capital and surplus requirements.</p> <p>35-609. Amendment of articles of incorporation.</p> <p>35-610. Increase of capital stock.</p> <p>35-611. Decrease of capital stock.</p> <p>35-612. Liability of stockholders; rights of fiduciary stockholders and persons pledging stock.</p> <p>35-613. Payments for capital stock.</p> <p>35-614. Capital stock transfers.</p> <p>35-615. Capital stock records.</p> <p>35-616. Mutual companies — Corporations, boards, or associations as agents or members thereof.</p> <p>35-617. Same — Requirements before doing business.</p> <p>35-618. Reincorporation of existing corporations.</p> <p>35-619. Conversion of stock companies into mutual life companies.</p> <p>35-620. Applicability of provisions to existing corporations.</p> <p>35-621. Directors — Annual election; qualifications; limitation on proxies.</p> <p>35-622. Same — Power to make bylaws.</p> | <p>Sec.</p> <p>35-623. Same — General election procedure.</p> <p>35-624. Same — Cumulative voting in stock company election.</p> <p>35-625. Voting powers under group policies.</p> <p>35-626. Liability of directors.</p> <p>35-627. Salaries to be authorized by directors.</p> <p>35-628. Limitation of payments to stockholders and policyholders.</p> <p>35-629. Election or appointment of officers; required security.</p> <p>35-630. Officers and directors not to be pecuniarily interested in transactions.</p> <p>35-631. Voting-trust agreements.</p> <p>35-632. Classification of risks and members, payment of dividends, and creation of surplus by mutual companies.</p> <p>35-633. Power of mutual company to borrow or assume liability.</p> <p>35-634. Investments and loans.</p> <p>35-635. [Repealed].</p> <p>35-636. Vouchers or affidavits as evidence of disbursements.</p> <p>35-637. Manner of keeping books, records, accounts, and vouchers.</p> <p>35-638. Acquisition of own capital stock.</p> <p>35-639. Variable or modified guaranteed contracts.</p> <p>35-640. Effect of merger or consolidation.</p> <p>35-641. Procedure for merger of domestic companies.</p> <p>35-642. Procedure for consolidating domestic companies.</p> <p>35-643. Merger or consolidation of domestic and foreign companies.</p> <p>35-644. Merger or consolidation — Approval by Mayor.</p> <p>35-645. Same — Procedures before voting.</p> <p>35-646. Same — Approval by shareholders.</p> <p>35-647. Same — Rights of dissenting shareholders.</p> <p>35-648. Articles of merger or consolidation.</p> <p>35-649. Date merger or consolidation completed.</p> |
|--|---|

**§ 35-601. Formation — Required contents of articles of incorporation.**

Any 7 or more persons who desire to become incorporated as an insurance company shall make, sign, and acknowledge articles of incorporation before an officer authorized to take acknowledgment of deeds, in which shall be stated:

(1) The proposed corporate name, which shall not be identical with nor so nearly resemble the name of an existing corporation organized under the laws of the District, or authorized to transact business therein, as to mislead the public or cause confusion and, in case of a mutual company, shall contain the word "mutual";



- (2) The term of its existence, which may be perpetual;
- (3) The place where its principal office shall be located, which shall be the District of Columbia;
- (4) The purpose of the company, which shall be restricted to the business of insurance appertaining to persons;
- (5) The mode and manner in which the corporate power shall be exercised; the number, terms of office, and manner of electing directors, who shall be stockholders, or, in the case of a mutual company, shall be members or policyholders of the corporation;
- (6) The provisions for meeting and votes of stockholders and policyholders. A stock company in which the policyholders do not vote shall provide for cumulative voting in its articles of incorporation. A stock company in which policyholders vote shall provide that each stockholder shall have 1 vote, in person or by proxy, for each share of stock owned. A company without capital stock shall provide that every policyholder shall be a member and entitled to 1 or more votes, in person, or by proxy, based on the insurance in force, the number of policies held or the amount of premiums paid as may be provided in the bylaws, and a stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder;
- (7) The amount of its capital stock, if any, the number of shares, and the par value of each share;
- (8) The number of directors who shall manage the company for the 1st year and their names; and
- (9) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company. (June 19, 1934, 48 Stat. 1143, ch. 672, ch. III, § 1; 1973 Ed., § 35-501.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

As to health and accident companies, see § 35-202.

As to prohibition against assessment companies, see § 35-431.

As to amendment of articles, see § 35-609.

As to increase or decrease of capital stock, see §§ 35-610 and 35-611.

As to liability of stockholders, see § 35-612.

As to reincorporation of existing corporations, see § 35-618.

As to conversion of stock into mutual companies, see § 35-619.

As to application to existing corporations, see § 35-620.

**Cited** in *Travelers Ins. Co. v. District of Columbia*, App. D.C., 382 A.2d 269 (1978).

## § 35-602. Same — Filing, notice and bond requirements.

The incorporators shall file such articles with the Commissioner and shall publish in a newspaper of general circulation in the District notice of the filing of such articles and of the intention to form such company. Copy of such notice verified by the oath of the publisher of the newspaper, or his agent, copies of proposed bylaws and forms of subscription for capital stock and of proposed applications for membership and for insurance and of all proposed forms of insurance policies, literature, and advertisements shall be filed with the Commissioner. The incorporators shall also file with the Commissioner a bond

payable to the Commissioner and his successors, as trustee, in the sum of \$10,000 with approved corporate sureties, and conditioned upon the faithful accounting to the proposed company, on completion of its organization and the receipt of its certificate of authority from the Commissioner, or the stockholders, members, applicants for policies, and creditors, or the trustee, receiver, or assignee of the proposed company, duly appointed in any proceedings in any court or department of competent jurisdiction in the District, in accordance with their respective rights in case the organization of the proposed company shall not be completed and a certificate of authority shall not be procured from the Commissioner. (June 19, 1934, 48 Stat. 1144, ch. 672, ch. III, § 2; 1973 Ed., § 35-502; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order pro-

vided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

**Cited in** *Travelers Ins. Co. v. District of Columbia*, App. D.C., 382 A.2d 269 (1978).

### § 35-603. Same — Corporate powers during completion of organization; issuance of certificate of authority.

(a) The Commissioner shall submit the proposed articles and other papers so filed with him to the Corporation Counsel of the District, who shall examine the same, and, if he finds the same in accordance with law, he shall so certify and return the same to the Commissioner, who shall cause the articles and the certificate of the Corporation Counsel to be recorded in the records of the Commissioner and issue to the incorporators 2 certified copies thereof, one of which shall be recorded in the Office of the Recorder of Deeds for the District of Columbia, and thereupon such incorporators and their associates shall

become and be a body corporate with power to sue and be sued, contract and be contracted with, adopt a seal, and do such other acts, subject to the provisions of chapters 3 to 8 of this title, as shall be needful to accomplish the purposes of its organization. If the Commissioner shall approve the sureties on the bond so filed, or on any like bond substituted therefor, he shall issue to the corporation a permit, as a "company in course of organization," authorizing it to complete its organization. Said company in course of organization shall have authority under such permit to solicit subscriptions and payments for capital stock, if a stock company, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations in chapters 3 to 8 of this title prescribed, as may be necessary and proper in completing its organization and qualifying itself for a certificate of authority from the Commissioner to transact the business of insurance appertaining to persons. But such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the Commissioner authorizing it so to do.

(b) Upon completion of organization in accordance with chapters 3 to 8 of this title the Commissioner shall issue to such company, in course of organization, a certificate of authority as an insurance company. (June 19, 1934, 48 Stat. 1144, ch. 672, ch. III, § 3; 1973 Ed., § 35-503; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-604. Same — Authority to solicit stock subscriptions or insurance applications.

No person shall solicit subscriptions for the capital stock of or applications for insurance in any such company in course of organization unless he has been duly authorized by the company and a certificate of his authority, duly signed by a principal officer of the company, has been filed with and approved by the Commissioner. (June 19, 1934, 48 Stat. 1145, ch. 672, ch. III, § 4; 1973 Ed., § 35-504; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-605. Same — Disposition of sums paid upon stock subscriptions.

Every subscription to the capital stock of a stock company shall contain the stipulation that no sum shall be used for commission, promotion, or organiza-



tion expenses in excess of a percentage of the amount paid upon the stock subscriptions, to be named in such stipulation and proved by the Commissioner, and the remainder of sums so paid to the company shall be invested in securities in which a life insurance company is authorized to invest, or deposited in a bank or trust company in the District until the company has duly procured a certificate of authority from the Commissioner. (June 19, 1934, 48 Stat. 1145, ch. 672, ch. III, § 5; 1973 Ed., § 35-505; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4715.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-606. Same — Examination of company; revocation and reinstatement of company’s permit or agent’s authority.

The Commissioner shall personally, or through his Deputy and assistants, examine into the affairs of any such company in course of organization and inspect its books and papers, and may summon and examine under oath any officer or agent or any person who is or has been connected with or who has knowledge of the affairs of such company, and if he finds the company is violating the law, or if the company shall not be qualified for a certificate of authority within 2 years from date of its permit, he shall revoke its permit; and if he finds an agent of such company has violated the law, he shall revoke his authority, and he may for such agent’s violation revoke the company’s permit. Any revocation shall be after 20 days’ notice. The Commissioner may, on proper showing, reinstate any company’s permit or agent’s authority which he has revoked. (June 19, 1934, 48 Stat. 1145, ch. 672, ch. III, § 6; 1973 Ed., § 35-506; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-607. Same — Time limitation for issuance of policies.

If any domestic life insurance company, in course or organization, shall not commence to issue policies within 2 years from the date of filing its articles of incorporation in the office of the Commissioner, its powers shall thereby cease, and the court, upon petition of the Commissioner or of any person interested, may fix by decree the time in which the Commissioner may settle and close its affairs; provided, however, that the Commissioner may extend the time for any such company to commence the issuance of policies for a period not exceeding 2 years if the said company shall show good cause in writing why the same should be done. (June 19, 1934, 48 Stat. 1145, ch. 672, ch. III, § 7; 1973 Ed.,

§ 35-507; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-608. Minimum capital and surplus requirements.

(a) A domestic capital-stock company organized under chapters 3 to 8 of this title shall have a paid-up capital stock of not less than \$1,000,000. Each domestic capital-stock company organized under chapters 3 to 8 of this title, in addition to the paid-up capital stock, shall have a surplus paid-up equal to at least 50% of such capital stock. Each domestic mutual company organized or doing business under chapters 3 to 8 of this title shall at all times have a surplus as defined by chapters 3 to 8 of this title of not less than \$1,500,000.

(b) No company shall be exempt from the provisions of this section by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection or subsequent amendment, except that in the case of companies authorized in the District of Columbia on August 31, 1964, and continuously authorized thereafter without any increase or broadening of authority, the minimum capital required of a stock company, or the minimum surplus required of a mutual company, shall not be increased by this section. (June 19, 1934, 48 Stat. 1145, ch. 672, ch. III, § 8; May 4, 1950, 64 Stat. 104, ch. 157, § 4; Aug. 31, 1964, 78 Stat. 764, Pub. L. 88-556, § 1; 1973 Ed., § 35-508; Aug. 14, 1973, 87 Stat. 303, Pub. L. 93-89, title II, § 201(1), (2).)

**References in text.** — “The effective date of this subsection,” referred to in subsection (b) of this section, is prescribed by § 5 of the Act of August 31, 1964, 78 Stat. 764, Pub. L. 88-557.

## § 35-609. Amendment of articles of incorporation.

Any company may amend its articles of incorporation upon publishing notice of such intention, authorized by a majority of its directors, once a week for 3 consecutive weeks in a newspaper of general circulation in the District, and with the written consent of stockholders representing at least two thirds of the capital stock entitled to vote, or two thirds of its members present in person or by proxy at a meeting called for that purpose if it does not have capital stock, and by observing such other and further requirements in that behalf as may be prescribed in its articles of incorporation. Such amendment shall be signed and acknowledged by the president and secretary or like officers of the company, and, with a copy of the proceedings of the stockholders or members, if any, and of the directors, shall be filed with the Commissioner and by him submitted to the Corporation Counsel, and if he finds the amendment and proceedings in conformity with the law, he shall so certify to the Commissioner. The amendment shall not take effect until the Commissioner shall deliver to the company his certified copy of the amendment and of the certificate of the Corporation Counsel. (June 19, 1934, 48 Stat. 1145, ch. 672, ch. III, § 9; Aug. 31, 1964, 78

Stat. 765, Pub. L. 88-556, § 3; 1973 Ed., § 35-509; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-4703 and 35-4715.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-610. Increase of capital stock.

(a) If a company amends its articles of incorporation by providing for an increase of its capital stock, such increase shall be subscribed and fully paid up within 1 year of the date of such amendment, unless the Commissioner shall certify his consent to an extension of such time. Failure to have such increase of capital stock paid up within the time provided may be considered grounds for ousting the company from its powers under any such amendment to such articles of incorporation by a court of competent jurisdiction in a proceeding by the Commissioner, the Corporation Counsel representing him, against the company for such judgment.

(b) Subsection (a) of this section shall not be applicable to an amendment of the articles of incorporation providing for an increase of capital stock wherein said amendment provides that said increase will be reserved for issuance for: (1) the acquisition of the ownership or control of another insurance company as an affiliate or subsidiary subject to the limitations of § 35-634(a)(10)(B); provided, however, that no such acquisition shall be consummated until it has been approved or ratified by stockholders representing at least a majority of the capital stock entitled to votes; (2) the granting of options to officers or employees of the company to purchase authorized but unissued shares of stock of the company, for such consideration and upon such terms and conditions as may be fixed by the board of directors; provided, however, that: (A) at no time shall the number of shares reserved for this purpose exceed, in the aggregate, 5% of the total authorized shares of stock of the company; (B) no more than 10% of the total number of shares authorized to be optioned may be made available to any individual under any and all options issued to him by the company; (C) no option shall be promised or granted: (i) to any individual employed by an insurance company authorized to do business in the District of Columbia (other than the company promising or granting the option or a subsidiary of the company promising or granting the option) while that individual is so employed; or (ii) to any individual within 2 years following the termination of his employment with such an insurance company; (D) the option price of shares subject to any such option shall not be less than 95% of the fair market value of such shares at the time the option is granted and shall be not less than the par value of such shares; (E) any such option shall not be transferable except by will or the laws of descent and distribution; and (F) any such option shall not be exercisable after the expiration of 10 years from the time the option is granted; or (3) the paying of stock dividends; provided, that at no time shall the number of shares of reserved unissued stock exceed the number of shares of issued and outstanding shares of stock of said company.



(June 19, 1934, 48 Stat. 1146, ch. 672, ch. III, § 10; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88-556, § 4; 1973 Ed., § 35-510; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4715.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in (a).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-611. Decrease of capital stock.

A company may, with the approval of the Commissioner, amend its articles of incorporation by providing for a decrease of its capital stock and a corresponding increase in surplus to an amount not less than the minimum capital stock and surplus required by chapters 3 to 8 of this title. The Commissioner shall not approve or issue his certified copy of such amendment if he be of the opinion that the interests of policyholders or creditors may be prejudiced thereby. No distribution of the assets of the company shall be made to stockholders upon any such decrease of capital stock which shall reduce the surplus and capital stock to less than the minimum capital stock and surplus required as aforesaid. Upon any such amendment so decreasing the capital stock such company may require each stockholder to return his certificate of stock and accept a new certificate for such proportion of the amount of its original capital stock as the reduced capital stock shall bear to the original capital stock. (June 19, 1934, 48 Stat. 1146, ch. 672, ch. III, § 11; 1973 Ed., § 35-511; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4715.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-612. Liability of stockholders; rights of fiduciary stockholders and persons pledging stock.

(a) All the stockholders of every company incorporated under this chapter shall be severally and individually liable to the policyholders and creditors of the company in which they are stockholders for the unpaid amount due upon the shares of capital stock held by them, respectively, for all debts and contracts made by such company until the whole amount of capital stock fixed and limited by such company shall have been paid in.

(b) No person holding capital stock in such company as executor, administrator, guardian, committee, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, committee, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust would have been if he had been living and competent to act and hold the stock in his own name.

(c) Every such executor, administrator, guardian, committee, or trustee shall represent the capital stock in his hands at all meetings of the company, and may vote accordingly as a stockholder.

(d) No person holding capital stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such capital stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his capital stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (June 19, 1934, 48 Stat. 1146, ch. 672, ch. III, § 12; 1973 Ed., § 35-512.)

**Section references.** — This section is referred to in § 35-4715.

### § 35-613. Payments for capital stock.

No company incorporated under this chapter shall be authorized to transact any business until the authorized capital stock shall have been actually paid in, either in cash or in investments authorized by chapters 3 to 8 of this title at market value; and it shall be lawful for the directors to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the directors shall deem proper, under the penalty of forfeiting the shares of capital stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within 60 days after a personal demand or a notice requiring such payment shall have been published once a week for 3 consecutive weeks in a daily newspaper in the District. (June 19, 1934, 48 Stat. 1147, ch. 672, ch. III, § 13; 1973 Ed., § 35-513.)

**Section references.** — This section is referred to in § 35-4715.

### § 35-614. Capital stock transfers.

(a) The capital stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the bylaws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment.

(b) A person in whose name shares of capital stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell or otherwise dispose of any of his shares of capital stock to another and deliver to him the certificates for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale or other disposition, not only as between the parties themselves but also as against the creditors of and subsequent purchasers from the former. (June 19, 1934, 48 Stat. 1147, ch. 672, ch. III, § 14; 1973 Ed., § 35-514.)

**Section references.** — This section is referred to in § 35-4715.

## § 35-615. Capital stock records.

(a) It shall be the duty of the directors of every domestic stock company to cause a record to be kept by the treasurer or secretary of the company or by the stock transfer agent of the company containing the names of all persons, alphabetically arranged, who are or shall within 6 years have been stockholders of such company, and showing their place of residence, the number of shares of capital stock held by them, respectively, the time when they became owners of such shares, and the amount of capital stock actually paid in.

(b) Such record shall, during the usual business hours of the day, on every business day, be open for inspection by policyholders, stockholders, creditors of the company, and the personal representatives of such policyholders, stockholders, and creditors at the office or principal place of business of such company in the place where its business operations shall be located in the District of Columbia, or at the office of the stock transfer agent located in the District of Columbia, and any policyholder, stockholder, creditor, or representative shall have a right to make extracts from such record.

(c) Such record shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any 1 or more stockholders.

(d) Every officer, stock transfer agent, or any other agent of any company who shall neglect to make any proper entry in such record, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor and the company shall pay to the party injured a penalty of \$50 for any such neglect or refusal, and all damages resulting therefrom.

(e) Every company that shall neglect to have such record kept open for inspection, as herein provided, shall forfeit to the District the sum of \$50 for every day it shall so neglect, to be sued for and recovered by the Commissioner, the Corporation Counsel representing him, in the Superior Court of the District of Columbia. (June 19, 1934, 48 Stat. 1147, ch. 672, ch. III, § 15; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 20, 1964, 78 Stat. 556, Pub. L. 88-458, § 1; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(37)(C); 1973 Ed., § 35-515; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4715.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in (e).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.



**§ 35-616. Mutual companies — Corporations, boards, or associations as agents or members thereof.**

Public or private corporations, boards, or associations of the District or elsewhere may make applications, enter into agreements for, hold policies in, and become members of mutual companies. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or of an estate may be recognized as acting for or on its behalf, but shall not be personally liable by reason of acting in such representative capacity. (June 19, 1934, 48 Stat. 1148, ch. 672, ch. III, § 16; 1973 Ed., § 35-516.)

**Section references.** — This section is referred to in § 35-4716.

**§ 35-617. Same — Requirements before doing business.**

No domestic mutual company shall transact any business until at least 200 persons shall have subscribed in the aggregate for at least \$200,000 of insurance and shall have paid in full 1 annual premium in money upon the insurance so subscribed. (June 19, 1934, 48 Stat. 1148, ch. 672, ch. III, § 17; 1973 Ed., § 35-517.)

**Section references.** — This section is referred to in § 35-4716.

**Cross references.** — As to prohibition against assessment companies, see § 35-431.

**§ 35-618. Reincorporation of existing corporations.**

(a) Any domestic insurance corporation existing or doing business on June 19, 1934, may, by a vote of a majority of its directors or trustees, accept the provisions of chapters 3 to 8 of this title and amend its charter to conform with the same upon obtaining the consent of the Commissioner thereto in writing, and filing such consent in the Office of the Recorder of Deeds for the District; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any and all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated hereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter and filing the same with the Commissioner and the record thereof with the Recorder of Deeds of the District, perpetually enjoy the same as and be such corporation, which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the period and the same general proceedings shall be taken upon the presentation of such amended charter or certificate adopted in relation to such amendment, to the Commissioner, as are required by this chapter to be taken with respect to an original charter or certificate, except that no examination of the condition and affairs of such corporation shall be required unless so ordered by the

Commissioner, and if the amended charter or certificate be approved by the Commissioner and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such charter or certificate so amended had been its original charter or certificate of incorporation, but without prejudice to pending action or proceeding or any rights previously accrued.

(b) Upon the reincorporation or upon the amendment of the charter of any corporation having a capital stock in accordance with the provisions of this section it may by a vote of the majority of its directors confer upon its policyholders as may have a prescribed amount of insurance upon their lives the right to vote for all or any less number of the directors in such manner not inconsistent with any provision of chapters 3 to 8 of this title. (June 19, 1934, 48 Stat. 1148, ch. 672, ch. III, § 18; 1973 Ed., § 35-518; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout (a).

**Department of Insurance abolished.** — See note to § 35-602.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

## § 35-619. Conversion of stock companies into mutual life companies.

Any domestic stock company organized or licensed to do business, whether incorporated under chapters 3 to 8 of this title, or any previous existing law, or act of Congress, may become a mutual company, and to that end may carry out a plan for the acquisition of shares of its capital stock; provided, however, that such plan:

(1) Shall have been adopted by a vote of a majority of the directors of such company;

(2) Shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose;

(3) Shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose, of policyholders each insured for at least \$1,000 and whose insurance shall then be in force and shall have been in force for at least 1 year prior to such meeting; notice of such meeting shall be given by mailing such notice from the home office of such corporation at least 30 days prior to such meeting, in a sealed envelope, postage prepaid, addressed to such policyholders at their last known post-office addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan; provided, however, that policyholders may vote in person, by proxy, or by mail; that all votes shall be cast by ballot and the Commissioner shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify

to the Commissioner and to the company the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Council of the District of Columbia; that all necessary expenses incurred by the Commissioner shall be paid by the company as certified to by him; and

(4) Shall have been submitted to the Commissioner and shall have been approved by him in writing; provided, that every payment for the acquisition of any shares of the capital stock of such company, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Commissioner; provided further, that neither such plan, nor any such payment, shall be approved by the Commissioner unless at the time of such approvals, respectively, the company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets not less than the entire liabilities of the company, including the net values of its outstanding contracts computed according to the standard adopted by the company under § 35-501, and also all funds, contingent reserves, and surplus save so much of the latter as shall have been appropriated or paid under such plan. (June 19, 1934, 48 Stat. 1149, ch. 672, ch. III, § 19; 1973 Ed., § 35-519; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout (3) and (4).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(274) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-620. Applicability of provisions to existing corporations.

Every company incorporated under the provisions of the laws of the District, or act of Congress, prior to June 19, 1934, is hereby brought under all the provisions of chapters 3 to 8 of this title, except that its capital may continue in the amount named in its charter during the existing term thereof, unless it extends its business to other kinds of insurance, and it shall be entitled to all privileges granted by such charter not authorized by this law. (June 19, 1934, 48 Stat. 1149, ch. 672, ch. III, § 20; 1973 Ed., § 35-520.)



### § 35-621. Directors — Annual election; qualifications; limitation on proxies.

The stock, property, and business of every company organized under chapters 3 to 8 of this title shall be managed by the directors who shall, except for the 1st year, be annually elected, at such time and place as shall be determined by the bylaws of the company. Every director of such a stock company shall be a stockholder thereof, and every director of such a mutual company shall be a policyholder thereof. All proxies used in the election of directors of such companies shall be valid for a period not exceeding 1 year from the election for which they were signed and in which they were authorized to be voted. (June 19, 1934, 48 Stat. 1149, ch. 672, ch. III, § 21; 1973 Ed., § 35-521.)

**Section references.** — This section is referred to in § 35-4715.

proceedings to question right to corporate office, see § 16-3501 et seq.

**Cross references.** — As to quo warranto

### § 35-622. Same — Power to make bylaws.

The directors of companies organized under chapters 3 to 8 of this title shall have power to make such bylaws as they deem proper for the management of the business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, employees, and servants that may be employed, for the appointment or election of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (June 19, 1934, 48 Stat. 1150, ch. 672, ch. III, § 22; 1973 Ed., § 35-522.)

### § 35-623. Same — General election procedure.

(a) Notice of the time and place of holding election of directors of a company organized under chapters 3 to 8 of this title shall be sent to those entitled to vote, and the election shall be made by such of the stockholders and/or policyholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and the persons receiving the greatest number of votes shall be directors. When any vacancy shall happen among the directors it shall be filled for the remainder of the year in such manner as shall be prescribed by the bylaws of the company.

(b) In case it shall happen at any time that an election of directors shall not be made on the day designated by the bylaws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for directors in such manner as may be provided in the bylaws, and all acts of directors shall be valid and binding as against said company until their successors shall be elected. (June 19, 1934, 48 Stat. 1150, ch. 672, ch. III, § 23; 1973 Ed., § 35-523.)

## § 35-624. Same — Cumulative voting in stock company election.

In an election for directors of any stock company in which the policyholders do not vote, each stockholder having a right to vote may cast the whole number of his votes for 1 candidate, or distribute them upon 2 or more candidates, as he may prefer, that is to say: If the stockholder having a right to vote owns 1 share of stock, or has 1 vote, or is entitled to 1 vote for each of 7 directors by virtue thereof, he may give 1 vote to each of said 7 directors, or 7 votes for any 1 thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit. (June 19, 1934, 48 Stat. 1150, ch. 672, ch. III, § 24; 1973 Ed., § 35-524.)

**Section references.** — This section is referred to in § 35-4715.

## § 35-625. Voting powers under group policies.

In every group policy issued by a domestic life company the employer shall be deemed to be the policyholder for all purposes, within the meaning of this chapter, and, if entitled to vote at meetings of the company, shall be entitled to 1 vote thereat. (June 19, 1934, 48 Stat. 1150, ch. 672, ch. III, § 25; 1973 Ed., § 35-525.)

## § 35-626. Liability of directors.

The directors of any company organized under the laws of the District shall be personally liable when they have participated in or assented to any act which shall cause injury to policyholders, creditors, or stockholders resulting from: (1) ultra vires acts; (2) illegal corporate acts done with their connivance, knowledge, or consent; (3) issuing unpaid or part-paid stock and marking or representing it as paid up in full; (4) dividend payments declared whether negligently or purposely impairing the capital stock and minimum surplus; (5) mismanagement; (6) loaning corporate funds to stockholders or discounting their notes out of corporate moneys; (7) making false notices or reports that deceive the public; or, (8) transferring property to officers or stockholders to defraud policyholders or creditors. If any of the directors shall object to declaring a dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections in writing with the secretary of the company and with the Commissioner, they shall be exempt from the liability prescribed in this section for dividends declared or paid impairing the capital stock and minimum surplus. (June 19, 1934, 48 Stat. 1150, ch. 672, ch. III, § 26; 1973 Ed., § 35-526; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

**Claim for “ultra vires” act maintainable as derivative action.** — A claim that the president and director of a corporation is personally liable for participating in “ultra vires”

act to the detriment of the corporation should be maintainable as part of a derivative action. *Johnson v. American Gen. Ins. Co.*, 296 F. Supp. 802 (D.D.C. 1969).

### § 35-627. Salaries to be authorized by directors.

No domestic company shall pay any salary, compensation, or emolument to any officer, trustee, or director thereof, amounting in any 1 year to more than \$5,000, unless such payment shall be authorized by the board of directors of the company. (June 19, 1934, 48 Stat. 1151, ch. 672, ch. III, § 27; 1973 Ed., § 35-527.)

**Section references.** — This section is referred to in § 35-4703.

### § 35-628. Limitation of payments to stockholders and policyholders.

No domestic company shall make any payments in form of dividends or otherwise to its stockholders for or on account of any interest in or relation to the company as stockholders unless it possesses assets in the amount of such payment in excess of its liabilities, including its capital stock, and the surplus required by chapters 3 to 8 of this title; and no domestic company shall make any payments to its policyholders for or on account of any interest in or relation to the company as members or policyholders except for matured claims or other policy obligations and in the purchase of surrender values unless it possesses assets in the amount of such payments in excess of its liabilities, and the capital stock and surplus required by chapters 3 to 8 of this title. (June 19, 1934, 48 Stat. 1151, ch. 672, ch. III, § 28; 1973 Ed., § 35-528.)

**Section references.** — This section is referred to in § 35-4715.

### § 35-629. Election or appointment of officers; required security.

There shall be a president, a secretary, and a treasurer of the company, who shall be elected by the directors; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as chapters 3 to 8 of this title and the company by its bylaws may require. (June 19, 1934, 48 Stat. 1151, ch. 672, ch. III, § 29; 1973 Ed., § 35-529.)

**Section references.** — This section is referred to in § 35-4703.

proceedings to question right to corporate office, see § 16-3501 et seq.

**Cross references.** — As to quo warranto

### § 35-630. Officers and directors not to be pecuniarily interested in transactions.

No director or officer of any company doing business in the District shall receive any money or valuable thing for negotiating, procuring, recommending,



or aiding in any purchase by or sale to such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, in any such purchase, sale, or loan, nor shall the financial obligation of any such director or officer be guaranteed by such company in any capacity; provided, that nothing herein contained shall prevent any such director or officer from receiving a fee for appraising property for said company or for serving on any committee that passes on the investments of said company; provided further, that nothing herein contained shall prevent a life insurance company from making a loan upon a policy held therein by a director or officer not in excess of the net value thereof or prevent any company in connection with the relocation of the place of employment of an officer, including any relocation in connection with the initial employment of such officer from: (1) making (or such officer from accepting therefrom) a mortgage loan to such officer on real property owned by such officer which is to serve as such officer's residence; or (2) acquiring (or such officer from selling thereto), at not more than the fair market value thereof, the residence of such officer. Any person violating any provision of this section shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1151, ch. 672, ch. III, § 30; 1973 Ed., § 35-530; Apr. 16, 1982, D.C. Law 4-99, § 2, 29 DCR 967.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 4-99.** — Law 4-99, the "Life Insurance Act Amendment of 1981," was introduced in Council and assigned Bill No. 4-325, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on January 26, 1982, and February 9, 1982, respectively. Signed by the Mayor on February 22, 1982, it was assigned Act No. 4-157 and transmitted to both Houses of Congress for its review.

**Section is regulatory, not criminal in nature.** — This section is regulatory and is intended to prevent the fiduciary relationship from being utilized in a manner which might give rise to a conflict of interest, and is not intended to punish one who violates the statute; hence the rule of strict construction of a criminal statute is to be relaxed. *Jordan v. Acacia Mut. Life Ins. Co.*, 409 F.2d 1141 (D.C. Cir.), cert. denied, 395 U.S. 959, 89 S. Ct. 2101, 23 L. Ed. 2d 746 (1969).

**Acts of director or officer prohibited.** — This section is intended to bar a director or

officer from receiving any compensation, such as a broker's commission, for procuring a loan and to prevent a director or officer from borrowing any money from insurer while he was director or officer. *Acacia Mut. Life Ins. Co. v. Jordan*, 283 F. Supp. 766 (D.D.C. 1968), rev'd on other grounds, 409 F.2d 1141 (D.C. Cir.), cert. denied, 395 U.S. 959, 89 S. Ct. 2101, 23 L. Ed. 2d 746 (1969).

**Borrower prevented from becoming director or officer.** — A person who is interested as the principal in a loan from an insurance company is barred from becoming a director of such company, even though his interest in the loan arose prior to his becoming a director. *Jordan v. Acacia Mut. Life Ins. Co.*, 409 F.2d 1141 (D.C. Cir.), cert. denied, 395 U.S. 959, 89 S. Ct. 2101, 23 L. Ed. 2d 746 (1969).

**Claim of violation of section maintainable as derivative action.** — A claim that the president and director of a corporation are personally liable for being pecuniarily interested in corporate transactions in violation of this section should be maintainable as part of a derivative action. *Johnson v. American Gen. Ins. Co.*, 296 F. Supp. 802 (D.D.C. 1969).

## § 35-631. Voting-trust agreements.

It shall be unlawful for any stockholder, director, or officer of any company having capital stock to enter into any contract or agreement, commonly known as "voting-trust agreements," whereby the rights, benefits, or liabilities attaching to the capital stock are transferred or assigned, temporarily or otherwise, to any person or group of persons, incorporated or unincorporated, for the

purpose of controlling, managing, or directing the company, or voting its stock; provided, that this section shall not prevent the granting of proxies by stockholders authorizing a designated individual to represent them at stockholders' meetings. (June 19, 1934, 48 Stat. 1151, ch. 672, ch. III, § 31; 1973 Ed., § 35-531.)

**Section references.** — This section is referred to in § 35-4715.

### **§ 35-632. Classification of risks and members, payment of dividends, and creation of surplus by mutual companies.**

A mutual company may, in its articles of incorporation or in its bylaws, provide for the classification of its risks and of its members and for the payment of dividends and for the creation of a surplus. (June 19, 1934, 48 Stat. 1152, ch. 672, ch. III, § 33; 1973 Ed., § 35-533.)

**Section references.** — This section is referred to in § 35-4716.

### **§ 35-633. Power of mutual company to borrow or assume liability.**

A mutual company organized under chapters 3 to 8 of this title may borrow or assume a liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of the law or as a guaranty fund upon agreement, which shall first be submitted to and approved by the Commissioner, that such loan or advance, with interest at a rate not exceeding 6% per annum, shall be repaid out of the earnings, or profits of such corporation with the approval of the Commissioner whenever in his judgment the financial condition of the company shall warrant; but such approval shall not be withheld if, after such repayment shall be made, the company shall have and be in possession of a surplus equal to 10% or more of its gross annual premiums. Any such loan or advance shall not form a part of the legal liabilities of the company, but until repaid all statements published by such company or filed with the Commissioner shall show the amount thereof then remaining unpaid. (June 19, 1934, 48 Stat. 1152, ch. 672, ch. III, § 34; 1973 Ed., § 35-534; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4716.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

### **§ 35-634. Investments and loans.**

(a) A domestic company shall invest its funds only in:

(1)(A) Bonds, notes, or other evidences of indebtedness of the United

States, any state, territory, or possession of the United States, the District of Columbia, the Dominion of Canada ("Canada") or any province of Canada, or of any administration, agency, authority, or instrumentality of any of the political units enumerated; or

(B) Obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the African Development Bank, or the Asian Development Bank;

(2) Bonds, notes, or other evidences of indebtedness guaranteed or insured as to principal and interest by the United States, any state, territory or possession of the United States, the District of Columbia, the Dominion of Canada, any province of the Dominion of Canada, or by an administration, agency, authority, or instrumentality of any of the political units enumerated;

(3) Bonds, notes, or other evidences of indebtedness issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a state, territory or possession of the United States, or the District of Columbia, or of the Dominion of Canada, or any province thereof, provided such obligations are authorized by law and are:

(A) Direct and general obligations of the issuing, guaranteeing, or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality; or

(B) Payable from designated revenues pledged to the payment of the principal and interest thereof;

(4) Legally authorized bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, and share certificates, which have been or may be issued by: (A) the Federal Home Loan Bank; (B) the Home Owners' Loan Corporation; (C) any federal savings and loan association; (D) the Reconstruction Finance Corporation; (E) the Farm Credit Administration; (F) any federal land bank; (G) the Federal Intermediate Credit Bank; (H) any housing authority organized under the public housing laws of the District of Columbia or any state of the United States, or in notes, bonds, or loans secured by mortgage or deed of trust insured under the provisions of the National Housing Act, as amended (§ 1701 et seq. of Title 12, United States Code), or guaranteed or insured pursuant to the provisions of § 3701 et seq. of Title 38, United States Code, as heretofore or hereafter amended, or by any entity, corporation, or agency which has been or which may be created by or authorized by any act which has been enacted, or which may hereafter be enacted by the Congress of the United States, or any amendment thereto, which has for its purpose the relief of, refinancing of, or assistance to owners of mortgaged or encumbered homes, farms, or other real estate;

(5)(A) Bonds, notes, or loans secured by 1st lien on real estate in the United States or Dominion of Canada worth at least 33⅓% more than the amount loaned thereon; provided, that this limitation shall not apply to any of the classes of securities mentioned in paragraph (4) of this subsection, if



guaranteed or insured in whole or in part as therein provided; but nothing in this section shall be deemed to prohibit a company from renewing or extending a loan for the original amount where there has been a shrinkage in the value of such real estate nor to prohibit a company from accepting, as part payment for real estate sold by it, a lien thereon for more than the percentage herein specified of the purchase price of such real estate. For the purpose of this section, real estate shall not be deemed to be encumbered by reason of the existence of:

- (i) Taxes or assessments that are not delinquent;
- (ii) Assessments or other charges made by nongovernmental agencies under instruments creating or reserving the right to make charges for the creation or maintenance of roadways, utilities, recreational or other community facilities or for supplying services or benefits for the community in which such real estate is situated, notwithstanding such charges are or may become a lien against the real estate, provided no such charges are delinquent;
- (iii) Instruments creating or reserving mineral, oil, gas, water, or timber rights, easements, rights-of-way, joint driveways, sewer rights, rights in walls;
- (iv) Building restrictions or other restrictive covenants, or leases with or without an option to purchase; or
- (v) Conditions or rights of reentry or forfeiture which are insured against by a title insurance company, or which cannot cut off, subordinate, or otherwise disturb the aforesaid 1st lien on real estate;

(B) Bonds, notes, or loans secured by 1st lien on leasehold estates in improved real property located in the United States or Dominion of Canada, where such real property is unencumbered except by rentals to accrue therefrom to the owner of the fee, and where there is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed so long as the lessee is not in default, provided the value of such leasehold, with improvements thereon, shall be at least 50 per centum more than the amount loaned thereon; provided, that this limitation shall not apply to any of the classes of securities mentioned in paragraph (4) of this subsection, if guaranteed or insured in whole or in part as therein provided. Such loan shall be completely amortized during the unexpired portion of the lease or leasehold estate securing its payment;

(C) Loans or advances by a company for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which real estate or upon a leasehold estate in said real estate such company then holds a 1st lien to secure a loan previously made: Provided, that no such loan or advance shall be made in a sum in excess of \$2,000: And provided further, that the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the 1st lien;

(D) Ground rents in the District of Columbia or any state of the United States; provided, that in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between the date of acquisition and earliest redemption date, or charged off at any time prior to

redemption date; and in the case of expired redeemable ground rents the premiums paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition;

(6)(A) Notes, bonds, or equipment trust certificates secured by any transportation equipment leased or sold to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding \$1,000,000 in the fiscal year immediately preceding purchase, which notes, bonds, or equipment trust certificates provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within 20 years from the date of issue and also provide: (i) for the vesting of title to such equipment, free from encumbrance in a corporate trustee; or (ii) for the creation of a 1st lien on such equipment, provided at the date of purchase such notes, bonds, or trust certificates are not in default as to principal or interest, and provided further that no company shall invest an amount in excess of 2 per centum of its admitted assets in any 1 issue of such notes, bonds, or equipment trust certificates of any 1 corporation;

(B) Notes, bonds, or other evidences of indebtedness evidencing rights to receive partial payments agreed to be made upon any contract of leasing or conditional sale, the issue of which has been approved by the proper public authority if such approval was required by law at the time of issue, if such lessee or conditional vendee is a solvent corporation domiciled within the United States or the Dominion of Canada, and if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of paragraph (7) of this subsection; provided, however, that no company shall invest an amount in excess of 2% of its admitted assets in any 1 issue of such notes, bonds, or other evidences of indebtedness of any 1 corporation;

(C) Equipment or machinery for use in transportation, manufacturing, production or distribution, leased or to be leased to any solvent corporation domiciled within the United States or the Dominion of Canada, if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of paragraph (7) of this subsection; provided, however, that no company shall invest an amount in excess of 2% of its admitted assets in such equipment or machinery leased or to be leased to any 1 corporation;

(7)(A) Bonds and other evidences of indebtedness of any solvent corporation created under the laws of the United States or any state thereof, or the District of Columbia, or the Dominion of Canada, or any province thereof; provided, that: (i) no company shall invest an amount in excess of 2% of its admitted assets in any 1 issue of such obligations of any 1 corporation; (ii) the net earnings of the issuing corporation available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by such insurance company shall have averaged yearly, and during the last year of said 5-year period shall have been not less than 1½ times its annual fixed charges at the time of the investment, or, if a new issue, as shown by the pro forma statement of the corporation; and (iii) there shall have been no defaults in interest

thereon, or on any such obligations of such corporation which are of equal or higher priority with those purchased, during the period of 5 years next preceding the date of acquisition, or, if outstanding for less than 5 years, at any time since said obligations were issued. The term "net earnings available for fixed charges," as used herein, shall mean the net income after deducting all operating and maintenance expenses, depreciation and depletion, and taxes other than federal, state, and District of Columbia income taxes, but nonrecurring items of income and expenses may be eliminated. The term "fixed charges" as used herein shall include interest on all of the fixed interest bearing debt of the corporation outstanding and maturing in more than 1 year, as of the date of acquisition, and in case of investment in contingent interest obligations, said term shall also include maximum annual contingent interest as of said date. The earnings of all predecessor, merged, consolidated, or purchased companies may be included through the use of consolidated or pro forma statements provided the fixed charges of all such companies are also included;

(B) Certificates, notes, or other obligations issued by trustees or receivers of any corporation created or existing under the laws of the United States or of any state, district, or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction; provided, that no company shall invest an amount in excess of 2% of its admitted assets in any 1 issue of such certificates, notes or other obligations of any 1 corporation;

(8) Bank certificates of deposit and bankers' acceptances, and other bills of exchange of the kind and maturities made eligible by law for purchase in the open market by Federal Reserve banks;

(9)(A) Preferred stock of any solvent corporation (other than its own) created under the laws of the United States, or of any state thereof, or the District of Columbia, or the Dominion of Canada, or any province thereof, where such corporation has not failed, in any 1 of the 3 fiscal years next preceding such investment, to have earned a sum applicable to dividends on such preferred stock equal at least to 3 times the amount of dividends due in that year, or where in case of issuance of new preferred stock such earnings applicable to dividends are equal to at least 3 times the amount of pro forma annual dividend requirements after giving effect to such new financing, and where the bonds and other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of paragraph (7) of this subsection, and where the total investment in any 1 issue of such preferred stock of any 1 corporation does not exceed 1% of the investing company's admitted assets;

(B) Stocks or other securities guaranteed by any solvent corporation created under the laws of the United States, or any state thereof, or the District of Columbia, or the Dominion of Canada, or any province thereof, if the guaranteeing corporation has not failed in any 1 of the 3 fiscal years next preceding such investment to have earned a sum applicable to interest on outstanding indebtedness and dividends on all guaranteed stocks equal to at least twice the amount of interest and guaranteed dividends payable for that



year. No company shall invest in excess of 1 per centum of its assets in any 1 issue of guaranteed stocks made eligible for investment under this paragraph;

(10)(A) Common stocks of any solvent corporation (other than its own) created under the laws of the United States, or of any state thereof, or the District of Columbia, or the Dominion of Canada, or any province thereof, which shall have paid common dividends in cash for not less than 5 years next preceding the purchase of such stocks, and where the bonds and other evidences of indebtedness, if any, and the preferred stock, if any, of such corporation are eligible as investments under the provisions of paragraphs (7) and (9), respectively, of this subsection, and where the total investment in the common stock of any 1 corporation does not exceed 1% of the investing company's admitted assets;

(B) In addition to the investments authorized in subparagraph (A) of this paragraph, common stocks of any insurance company (other than as prohibited in § 35-638) created under the laws of the United States, or by any state thereof, or the District of Columbia; provided, however, that stocks may be acquired under this subparagraph only:

(i) With the intention of ultimately acquiring ownership or control of the issuing corporation as an affiliate or a subsidiary;

(ii) If such acquisition will not cause the acquiring company's aggregate cost of investments under this subparagraph to exceed, in the case of a capital-stock company, the amount of capital, surplus, and contingency reserves in excess of \$1,500,000, or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$1,500,000; and

(iii) After the Commissioner of Insurance and Securities has been furnished with such information as he may require and has given to the acquiring company his written approval of the proposed acquisition stating his opinion that it will not substantially lessen competition, will not tend to create a monopoly in any line of insurance, and will not impair the financial stability of the acquiring company;

(11) Loans upon the pledge of any of the securities aforesaid, not exceeding 85% of the market value of the collateral taken as security at the date of the loan.

(b) A life insurance company may also purchase for its own benefit any policy of life insurance or other obligation of the company and claims of the holders thereof, and may lend to the holders of its life insurance policies sums not exceeding in any case the reserve value of the policy at the time the loan is made, and for the payment of any such loan the policy and all amounts payable thereunder shall be pledged.

(c) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(d)(1) A life insurance company may also acquire, hold, and convey real estate for the purposes and in the manner following: (A) the building in which it has its principal office and the land on which it stands; (B) such as shall be requisite for its convenient accommodation in the transaction of its business;

(C) such as shall have been acquired for the accommodation of its business; (D) such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings; (E) such as it shall have purchased at trustee sale or sales on judgments, decrees, or mortgages obtained or made for such debts; and (F) such as it may purchase or hold for the production of income. It may improve or otherwise develop in any manner such real estate and the improvements thereon, and may own, maintain, manage, collect, and receive income from, and sell or convey the same. No company shall, in any period of 12 consecutive months, invest in or agree to pay for real estate, including improvements thereon, under the authority of this subparagraph an aggregate amount in excess of 2% of its admitted assets as shown in its most recent annual statement; nor shall the total value of real estate and improvements thereon acquired or held by a company for the production of income under the provisions of this subparagraph at any time exceed 5% of its said admitted assets. No investment shall be made by any company pursuant to this subparagraph if such company then owns real estate having a total value in excess of 10% of its said admitted assets or if such investment will cause such company's aggregate investments in real estate owned by it to exceed 10% of its said admitted assets; provided, that for the purpose of applying said 10% limitation real estate shall include all real estate then owned by the company and such real estate as it may have owned and sold on contract, to the extent of the balance unpaid on such contract of sale; or if the balance unpaid on account of real estate owned and sold by a company is secured by mortgage or other instrument, there shall be included as real estate the amount, if any, by which the balance unpaid exceeds 75% of the value of such real estate. A company may, subject to the limitations and conditions of this subparagraph, elect to consider property acquired as specified in subparagraphs (C), (D), and (E) of this paragraph as real estate for the production of income as defined in this clause. Such election shall be duly authorized and recorded by the board of directors or by a committee of directors, officers, or employees of the company designated by the board charged with the duty of supervising loans or investments. The minutes of any such committee shall be duly recorded and regular reports of such committee shall be submitted to the board of directors.

(2) All such real estate specified in subparagraphs (C), (D), and (E) of paragraph (1) of this subsection, which shall not be necessary for its accommodation in the convenient transaction of its business, and which it has not elected to hold for the production of income, shall be sold by the company and disposed of within 5 years after it shall have acquired the title to the same, or within 5 years after the same shall have ceased to be necessary for the accommodation of its business, unless the company files with the Commissioner an application for extension of time, supported by such evidence as may be required by the Commissioner, establishing to his satisfaction that an extension would be to the advantage of the company and that the interests of the company would be affected adversely by a forced sale thereof, in which event the time for the sale may be extended to such time as the Commissioner shall direct.

(e) Any domestic life insurance company may also lend or invest its funds, to an extent that the cost of such investments shall not exceed in the aggregate

the lesser of: (1) Five per centum of its total admitted assets; or (2) in the case of a capital-stock company, the amount of capital, surplus, and contingency reserves in excess of \$1,500,000 or in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$1,500,000 in loans or investments (other than common stocks of insurance companies) not otherwise permitted under this section; provided, however, that no company shall invest in excess of 1% of its admitted assets in any 1 such loan or investment. The company shall keep a separate record of all loans and investments made under this subsection. In the event that, subsequent to being made under the provisions of this subsection, a loan or investment is determined to have become qualified under some other part of this section, the company may consider such loan or investment as being held under the applicable provision and such loan or investment shall no longer be considered as having been made under this subsection.

(f)(1) The compliance of a particular investment with the restrictions that not more than a specified percentage of the investing company's admitted assets may be invested therein, as set forth in paragraph (6), (7), (9), or (10) of subsection (a) or in subsection (d) or (e) of this section, whichever is applicable, shall be determined as of the date of the making or acquisition of each such investment.

(2) No loan or investment, except loans on the security of life insurance policies, shall be made by any such company, unless the same shall have been authorized or be approved by the board of directors or by a committee of directors, officers or employees of the company designated by the board charged with the duty of supervising loans or investments. The minutes of any such committee shall be duly recorded and regular reports of such committee shall be submitted to the board of directors.

(3) No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company. Nothing contained in this paragraph shall be construed to invalidate or prohibit such a company from joining with 1 or more other investors to share in the purchase of any securities or the making of any loan for investment purposes.

(g) Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company.

Legal title to or registration of all investments authorized pursuant to this section may be held by any company in the name of another person, firm, or corporation or other nominee name; provided, that the company's beneficial ownership of the investment is free and unencumbered. (June 19, 1934, 48 Stat. 1152, ch. 672, ch. III, § 35; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12; June 19, 1948, 62 Stat. 480, ch. 503; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Sept. 21, 1959, 73 Stat. 598, Pub. L. 86-329, § 1; Sept. 8, 1960, 74 Stat. 866, Pub. L. 86-731, § 1; Sept. 14, 1961, 75 Stat. 514, Pub. L. 87-245, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-739, § 1; Aug. 31, 1964, 78 Stat. 765, Pub. L. 88-566,



§ 2(a), (b); 1973 Ed., § 35-535; Aug. 14, 1973, 87 Stat. 303, Pub. L. 93-89, title II, § 201(3), (4); Oct. 30, 1981, D.C. Law 4-50, § 2, 28 DCR 4258; June 13, 1990, D.C. Law 8-141, § 2, 37 DCR 2654; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Cross references.** — As to investments, see § 35-202.

As to securities permitted for deposits, see § 35-416.

As to valuation of securities, see § 35-422.

As to investment limitations on variable payment contract assets, see § 35-639.

**Section references.** — This section is referred to in §§ 35-610, 35-639, 35-1521, 35-3702, 35-4703, and 35-4710.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance of the District of Columbia” in (a)(10)(B)(iii); and substituted “Commissioner” for “Superintendent” throughout (d)(2).

**Legislative history of Law 4-50.** — Law 4-50, the “District of Columbia Local Business Investment Act of 1981,” was introduced in Council and assigned Bill No. 4-137, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 14, 1981, and July 28, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-77 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-141.** — Law 8-141, the “African Development Bank and Asian Development Bank Investment Amendment Act of 1990,” was introduced in Council

and assigned Bill No. 8-127, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-197 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**References in text.** — The “Home Owners’ Loan Corporation,” referred to in subparagraph (B) of paragraph (4) of subsection (a), was dissolved by order of the Secretary of the Home Loan Bank Board, effective February 3, 1954, pursuant to the Act of June 30, 1953, 67 Stat. 121.

“The Reconstruction Finance Corporation,” referred to in subparagraph (D) of paragraph (4) of subsection (a), was abolished by Reorganization Plan No. 1 of 1967.

**Editor’s notes.** — The reference to “§ 3701 et seq. of Title 38, United States Code” appearing in (a)(4)(H) was translated from § 1801 et seq., which originally appeared, as this section was renumbered in the U.S. Code.

**Department of Insurance abolished.** — See note to § 35-602.

**Cited in** In re Parkwood, Inc., 461 F.2d 158 (D.C. Cir. 1971).

## § 35-635. Reinsurance of risks.

Repealed. Oct. 15, 1993, D.C. Law 10-36, § 6(a), 40 DCR 5812, as amended, May 16, 1995, D.C. Law 10-255, § 26(c), 41 DCR 5193.

**Cross references.** — As to reinsurance reserves, see § 35-201.

**Effect of amendments.** — D.C. Law 10-255 made stylistic changes in the repealing act.

**Legislative history of Law 10-36.** — Law 10-36, the “Law on Credit for Reinsurance Act of 1993,” was introduced in Council and assigned Bill No. 10-128, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-69 and transmitted to both Houses of Congress for its

review. D.C. Law 10-36 became effective on October 15, 1993.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

## § 35-636. Vouchers or affidavits as evidence of disbursements.

No domestic company shall make any disbursement of \$100 or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and describing the consideration for the payment; and if the expenditure be in connection with any matter pending before any legislative or public body or before any department or officer of any state or government, the voucher shall describe the nature of the matter and the interest of the company therein, or, if such voucher cannot be obtained, the expenditure shall be evidenced by affidavit describing its character and object and stating the reasons for not obtaining such voucher. (June 19, 1934, 48 Stat. 1154, ch. 672, ch. III, § 38; 1973 Ed., § 35-538.)

**Section references.** — This section is referred to in § 35-4703.

## § 35-637. Manner of keeping books, records, accounts, and vouchers.

Every domestic company shall keep its books, records, accounts, and vouchers in such manner that its financial condition can be ascertained and so that its financial statements filed with the Commissioner can be readily verified. (June 19, 1934, 48 Stat. 1154, ch. 672, ch. III, § 39; 1973 Ed., § 35-539; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-638. Acquisition of own capital stock.

It shall be unlawful for any company to acquire shares of its own capital stock except upon approval of the Commissioner where the total outstanding stock is being diminished in accordance with chapters 3 to 8 of this title. (June 19, 1934, 48 Stat. 1154, ch. 672, ch. III, § 40; 1973 Ed., § 35-540; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Cross references.** — As to decrease of capital, see § 35-611.

**Section references.** — This section is referred to in §§ 35-634 and 35-4715.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-639. Variable or modified guaranteed contracts.

(a) Every domestic life insurance company which issues contracts providing for payments which vary directly according to investment experience shall establish 1 or more separate accounts in connection with such contracts, as directed by the Commissioner. All amounts received by the company which are required by contract to be applied to provide such variable payments shall be added to the appropriate separate account, and the assets of any such separate account shall not be chargeable with liabilities arising out of any other

business the company may conduct. Any surplus or deficit which may arise in any such separate account by virtue of mortality experience shall be adjusted by withdrawals from or additions to such account so that the assets of such account shall always equal the assets required to satisfy the company's obligations for such variable payments.

(a-1) Every domestic life insurance company that issues modified guaranteed contracts may establish 1 or more separate accounts in connection with these types of contracts. All amounts received by the company to provide benefits under contracts for which separate accounts have been established shall be added to the appropriate separate account. Amounts allocated by the company to separate accounts for modified guaranteed contracts shall be owned by the company, the assets therein shall be the property of the company, and no company by reason of such account shall be or hold itself out to be a trustee. The assets of any such separate account shall not be chargeable with liabilities arising out of any other business the company may conduct. For the purposes of this section, the term:

(1) "Modified guaranteed annuity" means any group or individual contract for an annuity in which the benefits are guaranteed if held for specified periods and nonforfeiture values are based upon a market-value adjustment formula if held for shorter periods. The formula may or may not reflect the investment experience of any separate account. The assets underlying the annuity contract must be maintained by the insurance company in a separate account during the period, or periods, when the annuity becomes payable.

(2) "Modified guaranteed contracts" means a modified guaranteed annuity or modified guaranteed life insurance policy or contract.

(3) "Modified guaranteed life insurance" means any group or individual policy of life insurance, the underlying assets of which are held in a separate account, in which the benefits are guaranteed if held for specified periods and nonforfeiture values are based upon a market-value adjustment formula if held for shorter periods. The formula may or may not reflect the investment experience of any separate account. The assets underlying the policy must be maintained by the insurance company in a separate account during the period, or periods, when the policyholder can surrender the policy.

(b) A foreign or alien life insurance company authorized to do business in the District may be authorized to issue or deliver contracts in the District providing for payments which vary directly according to investment experience only if authorized to issue such contracts under the laws of its domicile.

(c) No domestic life insurance company shall be authorized to issue such variable contracts or modified guaranteed contracts, and no foreign or alien life insurance company shall be authorized to issue or deliver such contracts in the District, until such company has satisfied the Commissioner that its condition and methods of operation in connection with the issuance of such variable contracts or modified guaranteed contracts will not be such as to render its operation hazardous to the public or to its policyholders in the District. In determining the qualification of a company to issue or deliver such variable contracts or modified guaranteed contracts in the District, the Commissioner shall consider, among other things, the history and financial condition of the



company; the character, responsibility, and general fitness of the officers and directors of the company; and, in the case of a foreign or alien company, whether the regulation provided by the laws of its domicile provides a degree of protection to policyholders and the public substantially equal to that provided by this section and the rules and regulations issued by the Commissioner pursuant thereto.

(d) Every life insurance company which issues or delivers such variable contracts or modified guaranteed contracts in the District shall file with the Commissioner, in addition to the annual statement required by § 35-407, such other periodic or special reports as the Commissioner may prescribe.

(e) The provisions of this section shall not apply to any contracts which do not provide for payments which vary directly according to investment experience other than modified guaranteed contracts and shall not apply to contracts issued pursuant to subsection (l) of this section.

(f) The Commissioner shall have the authority to issue such reasonable rules and regulations as may be necessary to carry out the purposes of this section.

(g) In the case of a domestic life insurance company which issues contracts providing for payments which vary directly according to investment experience, except modified guaranteed contracts unless otherwise provided by rules and regulations promulgated by the Commissioner:

(1) The 2% limitation of § 35-634(a)(7)(A)(i), shall be enlarged to include an additional 2% of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section;

(2) The 1% limitation of § 35-634(a)(9) shall be enlarged to include an additional 2% of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section; and

(3) The 1% limitation of § 35-634(a)(10) shall be enlarged to include an additional 2% of the assets held by such company in the separate account or accounts established pursuant to subsection (a) of this section.

(h) Unless otherwise approved by the Commissioner, separate accounts relating to modified guaranteed contracts will be subject to investment laws applicable to a life insurance company's general asset account.

(i) Any modified guaranteed contract delivered or issued for delivery in the District, and any certificate evidencing nonforfeiture benefits that vary according to market-value adjustment formula issued pursuant to any life insurance or annuity contract issued on a group basis shall contain, on its first page, a prominent statement that the nonforfeiture value may increase or decrease, based on the market-value adjustment formula in the contract, and, for modified guaranteed life insurance only, be accompanied by a written disclosure to the purchaser of the policy's interest adjusted net cost index in compliance with regulations or forms approved by the Commissioner.

(j) To the extent necessary to comply with the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq.*) as now or later amended, or any rules issued thereunder, the insurance company may adopt special procedures for the conduct of the business and affairs of the modified guaranteed contract separate accounts, and may, for persons having beneficial interests therein,

provide special voting and other rights, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the corporation, to manage the business and affairs of the account.

(k) Reasonable actuarial expenses incurred in connection with approval of a modified guaranteed contract shall be paid by the person seeking approval of such a contract.

(l)(1) Every domestic life insurance company which issues modified guaranteed contracts in connection with a pension, retirement, or profit sharing plan may, after adoption of a resolution by its board of directors and delivery of certification of that adoption to the Commissioner, establish 1 or more separate accounts in connection with these types of contracts. The contracts may provide for payments and nonforfeiture values which vary according to investment experience of the accounts, for guaranteed payments and nonforfeiture values, for payments and nonforfeiture values that are subject to a market value adjustment formula, or for any other type of payments or incidental benefits. Any income and any realized or unrealized gain or loss on each separate account established pursuant to this paragraph shall be credited to or charged against that separate account in accordance with the terms of the contract without regard to the other income, gains, or losses of the company. Amounts allocated to the separate account shall be owned by the company, the assets therein shall be the property of the company, and no company by reason of such account shall be or hold itself out to be trustee. Unless the contract provides otherwise, the assets of any such separate account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(2) Notwithstanding any other provision of this chapter, the amounts accumulated in or allocated to separate accounts established pursuant to this subsection may be invested and reinvested in any kinds of investment. The investments shall not be taken into account in applying the investment limitations of § 35-634 to investments made by the company. (June 19, 1934, ch. 672, ch. III, § 41; June 12, 1960, 74 Stat. 218, Pub. L. 86-520, § 1; 1973 Ed., § 35-541; Mar. 19, 1994, D.C. Law 10-85, § 2, 40 DCR 8868; Mar. 22, 1994, D.C. Law 10-95, § 2, 41 DCR 503; Apr. 9, 1997, D.C. Law 11-255, § 38, 44 DCR 1271; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 2-2601 and 35-3702.

**Effect of amendments.** — D.C. Law 11-255 validated a previously made technical correction in (g)(2).

D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 10-85.** — Law 10-85, the "Modified Guaranteed Contracts Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-460. The Bill was adopted on first and second readings, on November 2, 1993, and December 7,

1993, respectively. Signed by the Mayor on December 16, 1993, it was assigned Act No. 10-159 and transmitted to both Houses of Congress for its review. D.C. Law 10-85 became effective on March 19, 1994.

**Legislative history of Law 10-95.** — Law 10-95, the "Modified Guaranteed Contracts Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-364, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1993, and January 4, 1994, respectively. Signed by the Mayor on January 21, 1994, it was

assigned Act No. 10-172 and transmitted to both Houses of Congress for its review. D.C. Law 10-95 became effective on March 22, 1994.

**Legislative history of Law 11-255.** — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it

was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-602.

**References in text.** — “Section 35-407,” referred to in (d), was repealed by D.C. Law 10-42, § 7(b), 40 DCR 6020, effective October 21, 1993.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-640. Effect of merger or consolidation.

(a)(1) When a merger or consolidation has been completed, the merging or consolidating companies shall be a single company.

(2) For a merger, the single company shall be the 1 designated in the plan as the surviving company and, for a consolidation, shall be the new company described in the plan.

(b) The separate existence of the merging or consolidating companies shall cease.

(c) The surviving or new company shall have the rights, the privileges, the immunities, and the powers and shall be subject to the duties and liabilities of a life company organized under chapters 3 through 8 of this title.

(d)(1) The surviving or the new company shall have the rights, the privileges, the immunities, and the franchises of each of the merging or consolidating companies.

(2) All property interests, debts, claims, or other interests belonging to the merging or the consolidating companies shall be transferred automatically to the single company.

(3) Realty interests vested in the merging or the consolidating companies shall not revert or be impaired because of the merger or the consolidation.

(e)(1) The surviving or the new company shall be responsible for obligations of the merging or the consolidating companies.

(2) A claim involving 1 of the merging or consolidating companies may be litigated as though the merger or the consolidation had not taken place or with the single company replacing the merging or the consolidating company.

(3) Neither the rights of creditors nor any liens upon the property of a merging or consolidating company shall be impaired by the merger or the consolidation.

(f)(1) For a merger, the articles of incorporation of the surviving company shall be considered amended to the extent that the articles of merger described changes in the articles of incorporation.

(2) For a consolidation, articles of consolidation provisions required or permitted in the articles of incorporation of life companies shall be considered the articles of incorporation of the new company.

(g) The aggregate amount of the net assets of the merging or the consolidating companies available for the payment of dividends immediately before the merger or the consolidation, to the extent that the amount cannot be transferred to stated capital, shall continue to be available for the payment of



dividends by the surviving or the new company. (June 19, 1934, ch. 672, ch. III, § 42, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 5-160.** — Law 5-160, the “Life Insurance Amendments Reform Act of 1984,” was introduced in Council and assigned Bill No. 5-471, which was referred to the Committee on Consumer and Regulatory

Affairs. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-225 and transmitted to both Houses of Congress for its review.

### § 35-641. Procedure for merger of domestic companies.

- (a) Two or more domestic life companies may merge into 1 company.
- (b) The board of directors of each company shall, by resolution adopted by a majority vote of the members of the boards, approve a plan of merger that lists the following:
  - (1) The names of the companies proposing to merge.
  - (2) The name of the surviving company the merging companies would become.
  - (3) The terms and the conditions of the proposed merger.
  - (4) The manner and the basis of converting the shares or memberships of each merging company into:
    - (A) Shares, memberships, or other securities of the surviving company.
    - (B) Shares or other securities of another company.
    - (C) Cash or property.
  - (5) Changes in the articles of incorporation of the surviving company.
  - (6) Other provisions with respect to the proposed merger as are deemed necessary or desirable. (June 19, 1934, ch. 672, ch. III, § 43, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-640.

### § 35-642. Procedure for consolidating domestic companies.

- (a) Two or more domestic life companies may consolidate into a new company.
- (b) To consolidate, the board of directors of each consolidating company, by resolution adopted by majority vote of the members of the boards, shall approve a plan of consolidation listing the following:
  - (1) The names of the companies proposing to consolidate.
  - (2) The name of the new company into which they propose to consolidate.
  - (3) The terms and conditions of the proposed consolidation.
  - (4) The manner and the basis of converting the shares or memberships of each company into:
    - (A) Shares, memberships, or other securities of the new company.
    - (B) Shares or other securities of another company.
    - (C) Cash or property.

(5) The articles of incorporation for domestic companies organized under this chapter.

(6) Other provisions with respect to the proposed consolidation as are deemed necessary or desirable. (June 19, 1934, ch. 672, ch. III, § 44, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-640.

## § 35-643. Merger or consolidation of domestic and foreign companies.

(a) Foreign and domestic life companies may be merged or consolidated if the laws where each company is organized permit the merger or the consolidation.

(b) If the surviving or the new company is governed by a foreign jurisdiction, then the surviving or the new company shall comply with chapter 7 of this title, before transacting life insurance business in the District of Columbia.

(c) The surviving or the new company shall comply with § 35-102, and maintain and appoint in the District, or not more than 10 miles beyond the territorial limits of the District, an agent for service of process and shall register with the Commissioner the address of its principal office and the name and address of its agent for service of process in the District, including any changes in address.

(d) Repealed.

(e)(1) Except as provided in paragraph (2) of this subsection, a merger or a consolidation under this section shall be the same as a merger or a consolidation of domestic companies creating a surviving or a new company governed by the District of Columbia.

(2) If the surviving or the new company shall be governed by a foreign jurisdiction, the merger or the consolidation shall be the same as a merger or a consolidation of domestic companies except insofar as the laws of the foreign jurisdiction provide otherwise. (June 19, 1934, ch. 672, ch. III, § 45, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39; Mar. 21, 1995, D.C. Law 10-233, § 3, 42 DCR 24; Apr. 18, 1996, D.C. Law 11-110, § 37, 43 DCR 530; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(k), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 10-233 rewrote (c); and repealed (d).

D.C. Law 11-110 validated a previously made substitution of “principal” for “principle” in (c).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (c).

**Legislative history of Law 5-160.** — See note to § 35-640.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Af-

fairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1995, it was

assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Legislative history of Law 11-524.** — See note to § 35-602.

**Department of Insurance abolished.** — See note to § 35-602.

## § 35-644. Merger or consolidation — Approval by Mayor.

(a) The plan of merger or of consolidation and the filings required by § 35-2003 shall be mailed to shareholders, to members, or to policyholders of the domestic merging and consolidating companies, and shall be filed with the Mayor according to § 35-2003.

(b) A life company aggrieved by the Mayor's decision to disapprove a plan of merger or of consolidation with the Mayor under subsection (a) of this section shall have the rights, under § 35-2003, to judicial review of the decision. (June 19, 1934, ch. 672, ch. III, § 46, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-640.

**References in text.** — Section 35-2003, referred to in (a) and (b), was repealed by § 17 of D.C. Law 10-44, effective Oct. 21, 1993.

**Editor's notes.** — Subsection (b) of this section is set forth above as it appears in D.C. Law 5-160. The word "filed" should probably appear following "consolidation."

## § 35-645. Same — Procedures before voting.

(a)(1) After approval from the Mayor, the board of directors shall, by resolution, direct that the plan of merger or of consolidation be voted upon at a meeting of the shareholders, the members, or the policyholders of record and entitled to vote.

(2) The vote may be conducted at either an annual or a special meeting.

(b) Written notice shall be delivered at least 20 days before the meeting, either personally or by mail, to each shareholder, member, or policyholder.

(c) The notice shall state the place, the time, and the purpose of the meeting, and a copy or a summary of the plan of merger or of consolidation shall be delivered with the notice.

(d) The notice shall also summarize dissenting shareholders' rights under § 35-647. (June 19, 1934, ch. 672, ch. III, § 47, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-640.

## § 35-646. Same — Approval by shareholders.

(a) The plan of merger or of consolidation shall be approved by the affirmative vote of the holders of two thirds of the voting outstanding shares of each company unless 2 or more classes of shares have been issued for any of the companies.



(b) If the company has issued 2 or more classes of shares, the plan of merger or of consolidation shall be approved by the affirmative vote of at least two thirds of the voting outstanding shares of each class.

(c) For a mutual company, each member or policyholder entitled to vote shall have 1 vote, regardless of the amount of insurance or number of policies held by the individual. (June 19, 1934, ch. 672, ch. III, § 48, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39; Feb. 27, 1996, D.C. Law 11-90, § 11, 42 DCR 7155.)

**Section references.** — This section is referred to in §§ 35-647, 35-4703, and 35-4716.

**Effect of amendments.** — D.C. Law 11-90 inserted “voting” in (a) and (b).

**Emergency act amendments.** — For temporary amendment of section, see § 11 of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 5-160.** — See note to § 35-640.

**Legislative history of Law 11-90.** — Law

11-90, the “Insurance Omnibus Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

## § 35-647. Same — Rights of dissenting shareholders.

(a)(1)(A) If, by the date of shareholder meeting described in § 35-646, a shareholder of a domestic merging or consolidating company files with the company a written objection to the merger or the consolidation and does not vote for the action and if, within 20 days after the merger or consolidation, the shareholder makes a written demand to the surviving or the new company for payment of the fair market value of the dissenting shareholder’s shares, then the surviving or new company shall pay the shareholder the value of the shares.

(B) The fair market value of the shares shall equal the market value on the day before the shareholders vote.

(2) The company shall make the payment when the dissenter surrenders the dissenter’s certificate of share ownership.

(3) The demand shall state the number and the class of the shares owned by the dissenting shareholder.

(4) Any shareholders failing to make the demand described in subsection (1) of this section within the 20-day period shall have their interests in the company and their shares limited by the terms of the merger or consolidation.

(b)(1) If, within 30 days after the completion of the merger or consolidation, the dissenting shareholder and the surviving or new company agree upon the value of the shares, then the company shall pay the agreed upon value, according to subsection (a)(2) of this section, within 90 days after the merger or the consolidation becomes complete.

(2) When the company pays the agreed upon value, the dissenting shareholder shall cease having an interest either in the shares or in the company.

(c)(1) If, at the end of the 30-day period described in subsection (b)(1) of this section, the dissenting shareholder and the surviving or new company do not

agree upon the value of the shares, then, within 60 days after the 30-day period ends, the dissenting shareholder may file a petition in the Superior Court of the District of Columbia asking for a determination of the fair value of the shares.

(2) The dissenter filing a timely petition shall be entitled to judgment against the surviving or new company for the amount the Court determines to be the fair value, and shall also be entitled to interest at the rate described in § 28-3302.

(3) The costs of the proceeding may be determined by the Court and may be apportioned by the Court against the parties.

(4) Some factors the Court may consider while making the apportionment described in paragraph (3) of this subsection shall be the following:

(A) Whether the fair value of the shares substantially exceeds the amount the company offered to pay.

(B) Whether the dissenting shareholder rejected the company's offer and brought the action in good faith.

(C) Whether the company failed to make an offer.

(5) The judgment shall be payable after the dissenting shareholder complies with subsection (a)(2) of this section.

(6) Any dissenting shareholder failing to petition within the 60-day period described in paragraph (1) of this subsection shall have his or her interests in the company and in his or her shares, as well as the interests of people claiming under the dissenter, limited by the terms of the merger or the consolidation.

(d) The right of a dissenter to receive the fair value for shares shall cease when the company abandons the merger or consolidation. (June 19, 1934, ch. 672, ch. III, § 49, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in §§ 35-645 and 35-4703.

**Legislative history of Law 5-160.** — See note to § 35-640.

**Editor's notes.** — In D.C. Law 5-160, para-

graph (2) of subsection (c) of this section was mistakenly set forth twice. This duplication error has been eliminated from the section as set forth above.

## § 35-648. Articles of merger or consolidation.

(a) Upon shareholder approval of the merger or consolidation, articles of merger or consolidation shall be executed in duplicate by the president of each company, attested by the secretary of each company, and the corporate seal of each company shall be stamped on the articles.

(b) The articles shall list the following:

(1) The plan of merger or consolidation.

(2) For each company, the number of members, policyholders, or shares outstanding and, if 2 or more classes of shares have been issued, the designation of each class and the number of shares outstanding in each class.

(3) For each company, the number of members, policyholders, or shares voting for the plan and the number voting against the plan and, if 2 or more classes of shares have been issued, the number of shares of each class voting for the plan and the number voting against the plan.

- (c)(1) The articles shall be filed with the Mayor.
- (2) The Mayor shall charge a fee for filing the articles.
- (3) If both the form of the articles and the fee payment comply with this section, then the Mayor shall perform the following:
  - (A) State the date of the filing and the word “filed” on the duplicates.
  - (B) Keep 1 of the duplicates.
  - (C) Send to the new or surviving company both the other duplicate and a certificate of merger or consolidation. (June 19, 1934, ch. 672, ch. III, § 50, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in §§ 35-649 and 35-4703.      **Legislative history of Law 5-160.** — See note to § 35-640.

**§ 35-649. Date merger or consolidation completed.**

The merger or consolidation shall be complete when the Mayor issues under § 35-648(c)(3)(C) the certificate of merger or consolidation to the new or surviving company. (June 19, 1934, ch. 672, ch. III, § 51, as added Mar. 14, 1985, D.C. Law 5-160, § 3(c), 32 DCR 39.)

**Section references.** — This section is referred to in § 35-4703.      **Legislative history of Law 5-160.** — See note to § 35-640.



## CHAPTER 7. FOREIGN AND ALIEN LIFE COMPANIES.

Sec.

35-701. Filing requirements; approval by Commissioner of certain conditions.

Sec.

35-702. Alien companies; trustees; examinations; financial statements.

**§ 35-701. Filing requirements; approval by Commissioner of certain conditions.**

(a) A foreign or alien insurance company desiring to transact business in the District shall file with the Commissioner:

(1) Its application for certificate of authority, stating the kind or kinds of insurance it proposes to transact;

(2) A copy of its charter, articles of incorporation, or deed or settlement, certified by the official who is required to keep or record the same in the state under whose laws the company is incorporated, or if organized under the laws of a foreign government, province, or state, by the proper official of such government, province, or state;

(3) A copy of its bylaws, or regulations, if any, certified to by the secretary of the company;

(4) Copies of the policies it is issuing or proposes to issue and of the applications therefor;

(5) Proof of compliance with the service of process requirements of § 35-102; and

(6) A statement of its financial condition and business, in form as prescribed by law for annual statements, signed and sworn to by the president and secretary or other principal officers of the company. If an alien company, the statement shall comprise only its condition and business in the United States, and shall be signed and sworn to by its United States manager.

(b) It shall satisfy the Commissioner that the company is duly organized under the laws of the state, province, or government under whose laws it professes to be organized, and authorized to do the business it is transacting or proposes to transact, and that its name is not identical with, nor so similar to, that of another company organized prior to the organization of the applying company as to lead to confusion.

(c) It shall satisfy the Commissioner that its funds are invested in accordance with the laws of its domicile and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies, and, if a stock company, that it has paid-up capital and surplus at least equal to the capital and surplus required of domestic stock companies, or, if a mutual company, that it has a surplus at least equal to that required by chapters 3 to 8 of this title for domestic mutual companies. (June 19, 1934, 48 Stat. 1154, ch. 672, ch. IV, § 1; May 4, 1950, 64 Stat. 104, ch. 157, § 6; 1973 Ed., § 35-601; Mar. 21, 1995, D.C. Law 10-233, § 4, 42 DCR 24; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(l), 44 DCR 1730.)

**Cross references.** — As to deposits of domestic companies, see § 35-415 et seq.

As to application of chapter to existing companies, see § 35-620.

**Effect of amendments.** — D.C. Law 10-233 rewrote (a)(5).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11- (Act 11-524) is projected to become law on May 22, 1997.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the func-

tions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

## § 35-702. Alien companies; trustees; examinations; financial statements.

The directors of an alien company may appoint citizens or corporations of the United States, approved by the Commissioner, as its trustees to hold funds and assets in trust for the benefit of the policyholders and creditors of the company in the United States. A certified copy of the record of such appointment and of the deed of trust shall be filed with the Commissioner, who may examine such trustees and any officers and agents, books, and papers of the company in the same manner as he may examine officers, agents, books, papers, and affairs of insurance companies. The funds and assets so held by such trustees shall, with the deposits otherwise made by the company and the funds and assets held by the company in the United States for the benefit of its policyholders and creditors in the United States, constitute the assets of the company for the purpose of making its financial statements required by chapters 3 to 8 of this title. (June 19, 1934, 48 Stat. 1155, ch. 672, ch. IV, § 2; 1973 Ed., § 35-602; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(l), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the first and second sentences.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-701.

**Department of Insurance abolished.** — See note to § 35-701.

## CHAPTER 8. LIFE INSURANCE; PENALTIES; TESTIMONY; SEPARABILITY.

Sec.

35-801. Violations.

35-802. Severability.

## § 35-801. Violations.

Any person, partnership, or company who violates any of the provisions of chapters 3 to 8 of this title, or fails to comply with any duty imposed upon him or it by any provision of chapters 3 to 8 of this title, for which violation or failure no penalty is elsewhere provided by the laws of the District, shall be fined not exceeding \$500 for each and every violation. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of chapters 3 to 8 of this title for which no penalty is provided elsewhere, or any rules or regulations issued under the authority of chapters 3 to 8 of this title, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of chapters 3 to 8 of this title shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (June 19, 1934, 48 Stat. 1176, ch. 672, ch. VI, § 1; 1973 Ed., § 35-801; Oct. 5, 1985, D.C. Law 6-42, § 456, 32 DCR 4450.)

**Section references.** — This section is referred to in § 35-4703.

**Cross references.** — As to application of chapter to existing companies, see § 35-620.

**Legislative history of Law 6-42.** — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No.

6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

## § 35-802. Severability.

Should any section or provision of chapters 3 to 8 of this title be decided by the courts to be unconstitutional or invalid, the validity of chapters 3 to 8 of this title as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. (June 19, 1934, 48 Stat. 1177, ch. 672, ch. VI, § 3; 1973 Ed., § 35-803.)

**Section references.** — This section is referred to in § 35-4703.



## CHAPTER 9. INDUSTRIAL LIFE INSURANCE.

Sec.

35-901. Applicability of provisions.

35-902. Policies — Defenses to validity.

35-903. Same — Incontestability.

Sec.

35-904. Same — Assignment.

35-905. Beneficiaries and claimants.

## § 35-901. Applicability of provisions.

Policies of industrial weekly payment life insurance after June 4, 1934, issued or delivered in the District of Columbia shall be subject to the following conditions, in addition to any others prescribed by law and not inconsistent with the provisions of this chapter. (June 4, 1934, 48 Stat. 834, ch. 373, § 1; 1973 Ed., § 35-1001.)

## § 35-902. Policies — Defenses to validity.

If payment of such a policy shall be refused because of unsound health at or prior to the date of the policy, the good faith of both applicant and insured shall constitute a material element in determining the validity of the policy; and it shall not be held invalid because of unsound health unless the insurer shall prove that, at or before the date of issue of the policy, the insured or applicant had knowledge of, or reason to know, the facts on which the defense is based, or shall prove that the insurance was procured by the insured or applicant in bad faith or with intent to defraud the company, any provision, agreement, condition, warranty, or clause contained in said policy, or endorsed thereon, or added or attached thereto, to the contrary notwithstanding. Proof by the insurer of fraud, intent to deceive, unsound health, bad faith, breach of warranty or condition precedent, or other matter of defense, shall be subject to the provisions of § 35-203. (June 4, 1934, 48 Stat. 834, ch. 373, § 2; 1973 Ed., § 35-1002.)

**Cross references.** — As to formal requisites of insurance policies, see § 35-503 et seq.

**Design of section.** — Design of this section is to make its terms applicable in all cases in which the defense is that the insured had suffered, before the issuance of the policy, a serious injury or disease, and had concealed the truth from the insurer. *Eureka-Maryland Assurance Co. v. Gray*, 121 F.2d 104 (D.C. Cir.), cert. denied, 314 U.S. 613, 62 S. Ct. 114, 86 L. Ed. 494 (1941).

**Effect of section.** — Effect of section is to shift the burden of proof and to make the insured's good faith concerning the representations on which the policy issued the test, and by its terms to impose on the insurer the burden of proving the contrary. *Eureka-Maryland Assurance Co. v. Gray*, 121 F.2d 104 (D.C. Cir.), cert. denied, 314 U.S. 613, 62 S. Ct. 114, 86 L. Ed. 494 (1941).

**Burden of proof.** — This section casts the burden of proof on the insurer and requires that it establish that the ailment was serious and that the insured knew, or had reason to know, the facts on which the defense is based. *Washington Nat'l Ins. Co. v. Stanton*, App. D.C., 31 A.2d 680 (1943).

Where the insurer sets up a defense of the insured's unsound health prior to the issuance of the policy, the insurer has the burden of proving that the applicant or insured acted in bad faith. *Walton v. Sun Life Ins. Co.*, App. D.C., 115 A.2d 310 (1955).

**Cited in** *Capital City Life Ins. Co. v. Saunders*, App. D.C., 65 A.2d 588 (1949); *Ferguson v. Quaker City Life Ins. Co.*, App. D.C., 129 A.2d 189 (1957).

### § 35-903. Same — Incontestability.

Every such policy shall be incontestable upon any ground relating to health after 2 years from its date of issue (notwithstanding a longer period may be named therein), provided the insured shall be alive at the end of said period. If the policy by its terms shall be incontestable after a shorter period than herein provided the terms of the policy with regard to such period of limitation shall govern. (June 4, 1934, 48 Stat. 834, ch. 373, § 3; 1973 Ed., § 35-1003.)

**Cross references.** — As to formal requisites of insurance policies, see § 35-503 et seq.

**Policy not made immediately incontestable.** — The words “immediate full benefit,” as used in an industrial life policy, did not make the policy incontestable or require that the

amount thereof be paid regardless of the cause of death, but meant nothing more than that the full amount of the policy would be paid immediately upon death. *Walker v. Superior Life Ins. Co.*, App. D.C., 62 A.2d 192 (1948).

### § 35-904. Same — Assignment.

Nothing contained in the terms of any such policy shall operate to prevent its valid assignment by the insured; but the company issuing the policy so assigned shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice of such assignment. (June 4, 1934, 48 Stat. 835, ch. 373, § 4; 1973 Ed., § 35-1004.)

### § 35-905. Beneficiaries and claimants.

Any individual designated with the consent of the insurer, evidenced by the signature of its president or secretary, or designated upon a form furnished by and filed with the insurer, as beneficiary of such a policy shall be entitled to the proceeds of such policy after the death of the insured in priority to all other claimants, and may sue in his own name for such proceeds if payment is refused by the insurer; provided, that upon the expiration of 15 days after the death of the insured, unless proof of claim in the manner and form required by the policy, accompanied by the policy for surrender, has theretofore been made by or on behalf of such designated beneficiary, the insurer may pay to any other claimant permitted by the policy. A person specified as one to whom the insured desires payment made, but not formally designated as beneficiary, shall be deemed a beneficiary for the purposes of this section, provided such designation be made in writing and filed with the company during the lifetime of the insured. (June 4, 1934, 48 Stat. 835, ch. 373, § 5; 1973 Ed., § 35-1005.)

## CHAPTER 10. CREDIT LIFE, ACCIDENT, AND HEALTH INSURANCE.

Sec.

35-1001. Short title; applicability of provisions.

35-1002. Definitions.

35-1003. Forms authorized to be issued.

35-1004. Limitations on amount.

35-1005. Term of coverage.

35-1006. Required policies or certificates; contents; delivery; applications and notices.

35-1007. Filing requirements; forms and rates to be approved by Commissioner.

Sec.

35-1008. Refunds, credits and charges.

35-1009. Claims.

35-1010. Choice of companies to provide required coverage.

35-1011. Violations.

35-1012. Administrative or judicial review of orders or actions.

**§ 35-1001. Short title; applicability of provisions.**

(a) This chapter regulating credit life insurance and credit accident and health insurance in the District of Columbia may be cited as “The Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance.”

(b) All life insurance and all accident and health insurance in connection with loans or other credit transactions of less than 5 years duration in the District of Columbia shall be subject to the provisions of this chapter. Such insurance written in connection with a loan or other credit transaction of 5 years duration or more shall not be subject to the provisions of this chapter, nor shall such insurance be subject to the provisions of this chapter if the issuance of the insurance is an isolated transaction on the part of the insurer not related to a plan or regular course of conduct for insuring debtors of the creditor. (Sept. 25, 1962, 76 Stat. 580, Pub. L. 87-686, § 1; 1973 Ed., § 35-1601.)

**§ 35-1002. Definitions.**

For the purpose of this chapter:

(1) “Mayor” means the Mayor of the District of Columbia.

(1A) “Commissioner” means the Commissioner of Insurance and Securities.

(2) “Credit life insurance” means insurance issued on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

(3) “Credit accident and health insurance” means insurance against the disability of a debtor which provides indemnity for payments on a specific loan or other credit transaction.

(4) “Creditor” means the lender of money or vendor of goods, services, or property, including a lessor under a lease intended as a security, for which payment is arranged through a loan or other credit transaction, and includes any successor to the right, title, or interest of any such lender, vendor, or lessor.

(5) “Debtor” means a borrower of money or purchaser of goods, services, or property, including a lessee under a lease intended as a security, for which payment is arranged through a loan or other credit transaction.

(6) “District” means the District of Columbia.

(7) “Indebtedness” means the amount payable by a debtor to a creditor in connection with a loan or other credit transaction.



(8) Repealed. (Sept. 25, 1962, 76 Stat. 580, Pub. L. 87-686, § 2; 1973 Ed., § 35-1602; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(m), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) added (1A) and repealed (8).

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

## § 35-1003. Forms authorized to be issued.

Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

- (1) Individual policies of life insurance issued to debtors on the term plan;
- (2) Individual policies of accident and health insurance issued to debtors on a term plan or disability provisions in individual life policies to provide such coverage;
- (3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan; and
- (4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability provisions in group life policies to provide such coverage. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 3; 1973 Ed., § 35-1603.)

**§ 35-1004. Limitations on amount.**

(a) The amount of credit life insurance shall not exceed the initial indebtedness however the indebtedness may be repayable; provided, however, that nothing contained herein shall be deemed to supersede or repeal the limitation on the amount of group insurance specified in § 35-514(2)(D). In cases where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled amount of unpaid indebtedness in the case of any individual policy or the actual amount of the unpaid indebtedness in the case of any group policy.

(b) The amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments.

(c) Notwithstanding subsections (a) and (b) of this section, the amount of any credit life insurance or credit accident and health insurance with respect to indebtedness incurred to defray educational costs of a student may include the part of a commitment that has not been advanced by the creditor. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 4; Sept. 20, 1966, 80 Stat. 821, Pub. L. 89-594, § 2; 1973 Ed., § 35-1604.)

**§ 35-1005. Term of coverage.**

The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurance company, commence on the date when the debtor becomes obligated to the creditor, except that where a group policy provides coverage with respect to existing obligations the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than 30 days from the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewal or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in § 35-1008. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 5; 1973 Ed., § 35-1605.)

**Section references.** — This section is referred to in § 35-1006.

**§ 35-1006. Required policies or certificates; contents; delivery; applications and notices.**

(a) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy or in the case of group insurance by a group policy and individual certificates of insurance.

(b) Each individual policy or certificate of credit life insurance, each individual policy or certificate of credit accident and health insurance, and each individual policy or certificate of credit life insurance and credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurance company, and the identity by name or otherwise of the person insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit accident and health insurance, a description of the coverage, including the amount and term thereof (which in the case of group insurance may be by description rather than stated amount and term), any exceptions, limitations, or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, whenever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

(c) Except as hereinafter provided, an individual policy or certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred.

(d) If a debtor makes a separate payment for credit life or credit accident and health insurance and an individual policy or certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance shall be delivered at such time to the debtor by the creditor. The copy of the application for or notice of proposed insurance shall be signed by the debtor and shall set forth the identity by name or otherwise of the person insured; the rate or amount of payment by the debtor separately for credit life insurance and credit accident and health insurance; and a statement that within 30 days, if the insurance is accepted by the insurance company, there will be delivered to the debtor an individual policy or certificate of insurance containing the name and home office address of the insurance company, and a description of the amount, term, and coverage including any exceptions, limitations, and restrictions. The copy of the application for, or notice of, proposed insurance shall refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this subsection is prominently set forth in such statement of account, instrument, or agreement. If a debtor does not make a separate payment for credit life or credit accident and health insurance, an application need not be taken or a notice of proposed insurance given. In any case, upon acceptance of the insurance by the insurance company, and within 30 days of the date upon which the term of the insurance commences, the insurance company shall cause the individual policy or certificate of insurance



to be delivered to the debtor. Said application or notice of proposed insurance shall state that, upon acceptance by the insurance company, the insurance shall become effective as provided in § 35-1005. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87-686, § 6; 1973 Ed., § 35-1606.)

**§ 35-1007. Filing requirements; forms and rates to be approved by Commissioner.**

(a) All forms of policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements and riders delivered or issued for delivery in the District and the premium rates pertaining thereto shall be filed with the Commissioner by the insurance company, in such manner and together with such supporting information as the Commissioner may reasonably require. In any case where a group policy is made for a group in the District and the policy is neither delivered nor issued for delivery in the District, the form of policy and all other forms and premium rates referred to in the preceding sentence shall be filed with the Commissioner by the insurance company.

(b) The Commissioner may, within 30 days after the filing of any form of policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement or rider, disapprove any such form if the premium rates charged or to be charged appear by reasonable assumptions to be excessive in relation to benefits paid or to be paid, or if the form contains provisions which are unjust, unfair, inequitable, misleading, or deceptive. In determining whether to disapprove any such form the Commissioner may give due consideration to past and prospective loss experience within and outside the District, to underwriting practice and judgment to the extent appropriate, and to all other relevant factors within and outside the District, and he may take into account the experience of the individual company.

(c) If the Commissioner notifies the insurance company that the form does not comply with the requirements of this chapter, it shall be unlawful thereafter for such insurance company to issue or use such form. In such notice, the Commissioner shall specify the reason for his disapproval and state that a hearing will be granted promptly upon request in writing by the insurance company. No such policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider shall be issued or used until the expiration of 30 days after it has been so filed, unless the Commissioner shall give his prior written approval thereto.

(d) The Commissioner may, at any time after a hearing, held after not less than 20-days written notice to the insurance company, withdraw his approval of any such form if it does not meet the requirements of this chapter.

(e) The insurance company shall not issue such forms or use them after the effective date of such withdrawal of approval.

(f) The insurance company may revise such forms and the premium rates pertaining thereto from time to time, and such revised forms and premium rates shall be filed with the Commissioner and shall be subject to all the preceding requirements of this section, in like manner as though they were

original filings with the Commissioner. (Sept. 25, 1962, 76 Stat. 582, Pub. L. 87-686, § 7; 1973 Ed., § 35-1607; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(m), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1002.

**Department of Insurance abolished.** — See note to § 35-1002.

## § 35-1008. Refunds, credits and charges.

(a) Each individual policy or certificate of credit life insurance or credit accident and health insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, that the Commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds shall be filed with the Commissioner who may disapprove such formula if he finds that it is unjust or unreasonable.

(b) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit accident and health insurance and an individual policy or certificate of insurance is not issued, the creditor shall promptly give written notice to such debtor and shall promptly make an appropriate credit to the account.

(c) The amount charged to a debtor for credit life or credit accident and health insurance shall not exceed the premium rate charged by the insurance company at the time the charge to the debtor is determined. (Sept. 25, 1962, 76 Stat. 583, Pub. L. 87-686, § 8; 1973 Ed., § 35-1608; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(m), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-1005.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in (a).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1002.

**Department of Insurance abolished.** — See note to § 35-1002.

## § 35-1009. Claims.

(a) All claims shall be paid either by draft drawn upon the insurance company or by check of the insurance company to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified, and every insurance company shall be held to strict settlement of all such claims.

(b) It shall be unlawful for any creditor, having received any such check or draft from such insurance company, to fail to correctly credit the account, pay to or upon the direction of, or otherwise correctly account to the claimant to whom payment is due for the full amount of such check or draft, less any lawful deductions therefrom.

(c) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurance company or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurance company in adjusting claims, nor, in the case of an individual creditor, shall the spouse of such creditor or any relative of the creditor or spouse within the 3rd degree of consanguinity be so designated, nor shall any officer or employee of a corporate creditor or any spouse or relative of such officer, employee, or spouse within the 3rd degree of consanguinity be so designated; provided, that a group policyholder may, by arrangement with the group insurance company, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurance company. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 9; 1973 Ed., § 35-1609.)

**§ 35-1010. Choice of companies to provide required coverage.**

When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the creditor may not require that the insurance be written through any particular insurance company or any particular agent, and the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurance company authorized to transact an insurance business within the District. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 10; 1973 Ed., § 35-1610.)

**§ 35-1011. Violations.**

(a) In the case of any violation of this chapter by an insurance company, agent, solicitor, or broker, the Commissioner shall have authority to proceed in accordance with the provisions of §§ 35-405 and 35-426 and §§ 35-1506 and 35-1540.

(b) In the case of any violation of this chapter by a creditor or by any other person not licensed in the District as an insurance agent, solicitor, or broker, regardless of the fact that such creditor or other person is not required by law to be so licensed, the penalties and the procedure for their imposition shall be as set forth in § 35-1546. (Sept. 25, 1962, 76 Stat. 584, Pub. L. 87-686, § 11; 1973 Ed., § 35-1611; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(m), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1002.

**Department of Insurance abolished.** — See note to § 35-1002.



## § 35-1012. Administrative or judicial review of orders or actions.

Any insurance company, agent, solicitor, or broker aggrieved by any order or action of the Commissioner under this chapter may contest the validity of such order or action by appeal or through any other appropriate proceeding, in accordance with the procedures prescribed by §§ 35-1547 and 35-1548; provided, that any such insurance company, agent, solicitor, or broker, which is licensed in the District under chapters 3 to 8 of this title, may contest the validity of such order or action by appeal or through any other appropriate proceeding in accordance with the procedures prescribed by chapters 3 to 8 of this title. (Sept. 25, 1962, 76 Stat. 585, Pub. L. 87-686, § 12; 1973 Ed., § 35-1612; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(m), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1002.

**Department of Insurance abolished.** — See note to § 35-1002.

## CHAPTER 11. NEWBORN HEALTH INSURANCE.

Sec.

35-1101. Payable benefits.

35-1102. Extent of coverage.

35-1102.1. Inpatient postpartum treatment;  
at-home post-delivery care.

Sec.

35-1103. Notification of birth and payment of  
premiums or fees.

35-1104. Applicability of chapter.

35-1105. Exclusions.

### § 35-1101. Payable benefits.

All individual and group health insurance policies providing coverage on an expense-incurred basis and individual and group service-or indemnity-type contracts issued by a nonprofit health service plan shall provide that health insurance benefits shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth. (1973 Ed., § 35-2001; Oct. 20, 1979, D.C. Law 3-33, § 2, 26 DCR 1116.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 3-33.** — Law 3-33, the “Newborn Health Insurance Act of 1979,” was introduced in Council and assigned Bill No. 3-12, which was referred to the Committee on Public Services and Consumer Af-

fairs. The Bill was adopted on first and second readings on July 17, 1979, and July 31, 1979, respectively. Signed by the Mayor on August 31, 1979, it was assigned Act No. 3-99 and transmitted to both Houses of Congress for its review.

### § 35-1102. Extent of coverage.

The coverage for dependent children up to 18 years of age shall include:

(1) Coverage for injury or sickness, including the necessary care and treatment of medically diagnosed congenital defects, birth abnormalities, and prematurity; and

(2) Coverage for preventive and primary care services, including physical examinations, measurements, sensory screening, neuropsychiatric evaluation, and development screening, which coverage shall include unlimited visits for children up to the age of 12 years, and 3 visits per year for minor children ages 12 years up to 18 years of age. Preventive and primary care services shall also include, as recommended by the physician, hereditary and metabolic screening at birth, immunizations, urinalysis, tuberculin tests, and hematocrit, hemoglobin, and other appropriate blood tests, including tests to screen for sickle hemoglobinopathy. (1973 Ed., § 35-2002; Oct. 20, 1979, D.C. Law 3-33, § 3, 26 DCR 1116; May 21, 1992, D.C. Law 9-99, § 2(a), 39 DCR 2142.)

**Section references.** — This section is referred to in §§ 35-1104 and 35-4703.

**Legislative history of Law 3-33.** — See note to § 35-1101.

**Legislative history of Law 9-99.** — See note to § 35-1105.

#### § 35-1102.1. Inpatient postpartum treatment; at-home post-delivery care.

(a) Except as provided in subsection (b) of this section, all individual and group health policies providing maternity and newborn care coverage on an

expense-incurred basis and individual and group service or indemnity type contracts issued by a nonprofit health service plan, including policies issued by Group Hospitalization and Medical Services, Inc., shall provide coverage for inpatient postpartum treatment in accordance with the medical criteria outlined in the most current version of or an official update to the Guidelines for Perinatal Care ("Guidelines") prepared by the American Academy of Pediatrics and the American College of Obstetricians or the Standards for Obstetric-Gynecologic Services ("Standards") prepared by the American College of Obstetricians and Gynecologists, and such coverage must include an in-hospital stay of a minimum of 48 hours after a vaginal delivery, and 96 hours after a Cæsarian delivery.

(b) A private review agent or health maintenance organization may authorize a shorter length of stay if the physician, in consultation with the mother, determines that the newborn and mother meet the criteria for medical stability in accordance with the Guidelines or Standards.

(c) In all cases of early discharge pursuant to subsection (b) of this section, the insurer shall provide coverage for post-delivery care within the minimum time periods established in subsection (a) of this section, to be delivered in the patient's home, or, in a provider's office, as determined by the physician in consultation with the mother. The at-home post-delivery care shall be provided by a registered professional nurse, physician, nurse practitioner, nurse midwife, or physician assistant experienced in maternal and child health, and shall include:

(1) Parental education;

(2) Assistance and training in breast or bottle feeding; and

(3) Performance of any medically necessary and clinically appropriate tests, including the collection of an adequate sample for hereditary and metabolic newborn screening.

(d) Upon notification of the pregnancy of the insured, the insurer shall:

(1) Encourage and assist the insured, prior to the delivery date, to select and contact a primary care provider for the expected newborn prior to delivery; and,

(2) Provide the insured prior to the delivery date with information on postpartum home visits for the mother and child that includes the names of providers that are available for postpartum home visits.

(e) No insurer may deselect, terminate the services of, require additional documentation from, require additional utilization review, reduce payments, or otherwise provide financial disincentives to any attending provider who orders care consistent with this chapter.

(f) Every insurer shall provide notice to policyholders regarding the coverage required under this chapter. The notice shall be in writing and shall be transmitted at the earliest of either the next mailing to the policyholder, the yearly summary of benefits sent to the policyholder, or January 1 of the year following April 9, 1997. (Oct. 20, 1979, D.C. Law 3-33, § 3a, as added Apr. 9, 1997, D.C. Law 11-241, § 3, 44 DCR 1125.)



**Effect of amendments.** — D.C. Law 11-241 added this section.

**Legislative history of Law 11-241.** — Law 11-241, the “Newborn Health Insurance Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-501 and transmitted to both Houses of Congress for its review. D.C. Law 11-241 became effective on April 9, 1997.

**Purpose of Law 11-241.** — Section 2 of D.C. Law 11-241 provided that:

“(a) The Council of the District of Columbia finds that:

(1) Phenylketonuria (“PKU”) is a cause of severe mental retardation that can be prevented if diagnosed within the first 3 weeks of childbirth.

(2) The District’s statutes and regulations direct the screening of newborn infants for hereditary and congenital disorders in the hospital prior to discharge.

(3) Hospital stays of less than 24 hours after childbirth typically result in unsatisfactory PKU specimens as a result of insufficient milk feedings.

(4) Insurers, both indemnity and managed care plans, have implemented benefit plans covering no more than 24 hours of postpartum stay in a hospital, despite little or no scientific support for the efficacy of this policy for the general population.

(5) The Guidelines for Perinatal Care, prepared by the American Academy of Pediatrics and the American College of Obstetrics and Gynecology, recommends a hospital stay of at least 48 hours after childbirth.

(b) In the interest of maximizing the prevention of mental retardation from PKU and other hereditary and congenital disorders, the Council of the District of Columbia hereby establishes a policy to require all individual and group health insurance policies to provide coverage for a minimum hospital stay for a mother and child following the birth of a child.”

## § 35-1103. Notification of birth and payment of premiums or fees.

If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period. (1973 Ed., § 35-2003; Oct. 20, 1979, D.C. Law 3-33, § 4, 26 DCR 1116.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 3-33.** — See note to § 35-1101.

## § 35-1104. Applicability of chapter.

The requirements of this chapter shall apply:

(1) To all insurance policies and subscriber contracts delivered or issued for delivery in the District more than 120 days after October 20, 1979;

(2) To all such insurance policies and subscriber contracts renewed, amended or reissued after 120 days following October 20, 1979;

(3) To only children born more than 120 days after the October 20, 1979;

(4) To all individual subscriber contracts and group certificates issued or delivered in the District of Columbia by Group Hospitalization and Medical Services, Inc.;

(5) To all for-profit as well as nonprofit indemnity type health insurers issuing or delivering individual indemnity type accident and sickness health insurance policies and group certificates in the District of Columbia; and

(6) To health insurance certificates, except those described in § 35-1102(2), that are delivered within the District of Columbia from group health insurance policies which are sold outside of the District of Columbia. (1973 Ed., § 35-2004; Oct. 20, 1979, D.C. Law 3-33, § 5, 26 DCR 1116; May 21, 1992, D.C. Law 9-99, § 2(b), 39 DCR 2142.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 3-33.** — See note to § 35-1101.

**Legislative history of Law 9-99.** — See note to § 35-1105.

## § 35-1105. Exclusions.

Specifically excluded from the coverage requirements of this chapter are Medicare Supplement insurance policies, accident only policies, dread disease policies, student accident policies, nursing home policies, and home health care policies. (Oct. 20, 1979, D.C. Law 3-33, § 6, as added May 21, 1992, D.C. Law 9-99, § 2(c), 39 DCR 2142.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 9-99.** — Law 9-99, the “Well-Child Care Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-81, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-171 and transmitted to both Houses of Congress for its review. D.C. Law 9-99 became effective on May 21, 1992.

## CHAPTER 12. FRATERNAL BENEFIT ASSOCIATIONS.

Sec.	Sec.
35-1201. Definition; authorized benefits and funds; governing provisions.	35-1217. Same — Associations or individuals using name of previously existing corporation.
35-1202. Authority of existing associations to continue business.	35-1218. Insurance and/or annuities upon lives of children — Applications.
35-1203. Nonresident associations; filing requirements; required showing of authority; examinations.	35-1219. Same — Computation of contributions.
35-1204. Required annual reports; contents.	35-1220. Same — Required reserve.
35-1205. [Repealed.]	35-1221. Same — Powers of society.
35-1206. Issuance of permit to do business.	35-1222. Separation of fraternal and insurance activities — Corporations affected.
35-1207. Formation procedure.	35-1223. Same — Certificate of corporation to be filed; contents.
35-1208. Reincorporation or continuance of powers of existing corporations.	35-1224. Same — Approval and certificates of Commissioner required.
35-1209. Incorporation of subordinate bodies.	35-1225. Same — General powers, duties, liabilities and structure of activities.
35-1210. Payment of assessments and/or dues by beneficiary.	35-1226. Same — Continuation and supervision of original corporation.
35-1211. Exemption of benefits from legal process.	35-1227. Same — Existing contracts preserved; Congressional powers reserved.
35-1212. Meetings.	35-1228. Same — Applicability of state and District laws.
35-1213. Fraudulent representations.	
35-1214. Violations of provisions or injunction.	
35-1215. Individual violations of provisions.	
35-1216. Exceptions to provisions — Associations for profit; certain specified organizations.	

### § 35-1201. Definition; authorized benefits and funds; governing provisions.

A fraternal beneficial association is hereby declared to be a corporation, society, order, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and representative form of government, making provision for the payment of benefits in case of death. Each such association may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident, or old age; provided, that the period in life at which physical disability benefits on account of old age commences shall not be under 70 years, or the age of expectancy from the time of entering, subject to their compliance with its laws. Any such association may create and maintain a reserve, emergency, or benefit fund in accordance with its laws. Any such association having a reserve, emergency, or benefit fund may, in addition to the benefits hereinbefore named, pay withdrawal benefits, not exceeding the contributions of such member, to a member unable or unwilling to continue membership, provided such membership shall continue not less than 3 successive years. Such association may also, after 10 years of membership, apply its funds and accumulations as its laws provide or the association and members agree. The fund from which the payments of such benefits shall be made and the fund from which the expenses of such association shall be defrayed shall be derived from assessments, dues, and other payments collected from its members or otherwise. The payment of death benefits shall be to any person, organization,



or institution designated by the member, including, but not limited to, the families, heirs, blood relatives, affianced husband, affianced wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution, or to persons dependent upon the member or upon whom the member is dependent. Such association shall be governed by §§ 35-1201 to 35-1217, and shall be exempt from the provisions of insurance laws of the United States relating to the District of Columbia, and no law hereafter passed shall apply to them unless they be expressly designated therein; provided, however, that the fact that any such association has outstanding agreements with its members for the payment of benefits other than those herein specified, if it is making no new contracts of that character and is retiring those already existing, shall not exclude such association from the operation of §§ 35-1201 to 35-1217. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 749; Dec. 20, 1928, 45 Stat. 1055, ch. 40, § 1; 1973 Ed., § 35-901; Mar. 13, 1993, D.C. Law 9-181, § 2, 39 DCR 8081; Mar. 16, 1993, D.C. Law 9-193, § 2, 39 DCR 9009.)

**Cross references.** — As to exceptions to chapter, see §§ 35-1216 and 35-1217.

As to insurance on lives of children, see §§ 35-1218 to 35-1221.

As to separation of insurance and fraternal activities, see §§ 35-1222 to 35-1228.

**Section references.** — This section is referred to in §§ 35-202, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

**Legislative history of Law 9-181.** — Law 9-181, the "Fraternal Benefit Association Beneficiaries Designation Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-581, which was retained by Council. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on October 23, 1992, it was assigned Act No. 9-300 and transmitted to both Houses of Congress for its review. D.C. Law 9-181 became effective on March 13, 1993.

**Legislative history of Law 9-193.** — Law 9-193, the "Fraternal Benefit Association Beneficiaries Designation Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-444, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-314 and trans-

mitted to both Houses of Congress for its review. D.C. Law 9-193 became effective on March 16, 1993.

**Beneficiaries limited to those permitted by section.** — This section permitted as beneficiaries only families, heirs, blood relatives, affianced husband, affianced wife, or dependents, and an insurance certificate in favor of a woman who had been living with the insured, knowing that he had a legal wife living, was void. *Electrical Workers Beneficial Ass'n v. Brown*, 26 F.2d 981 (D.C. Cir. 1928).

Police Relief Association could not authorize payment of benefit certificates to persons other than those designated by this section as eligible beneficiaries. *Simpkins v. McDermott*, 81 F.2d 257 (D.C. Cir. 1935), cert. denied, 297 U.S. 715, 56 S. Ct. 592, 80 L. Ed. 1001 (1936).

**Amendment of association's charter.** — The amendment of the charter of a fraternal benefit association, depriving certificate holders of the right formerly had of designating beneficiaries, will not affect existing insurance contracts in the absence of anything in the charter showing that it was intended to have a retrospective effect. *Brown v. Grand Fountain of U.O. of T.R.*, 28 App. D.C. 200 (1906).

**Cited in** *Prudent Patricians of Pompeii v. Marr*, 20 App. D.C. 363 (1902); *Supreme Commandery of United Order of Golden Cross v. Bernard*, 26 App. D.C. 169 (1905); *National Council Junior Order United Am. Mechanics v. State Council*, 27 App. D.C. 1 (1906).

## § 35-1202. Authority of existing associations to continue business.

All such associations coming within the description as set forth in § 35-1201, organized under the laws of the United States relating to said District, or of any state, country, province, or territory, and doing business in said District on January 1, 1902, may continue such business; provided, that they comply with the provisions of §§ 35-1201 to 35-1217 regulating annual reports and the designation of the Commissioner of Insurance and Securities of said District, provided for in § 35-101 et seq., as the person upon whom process may be served as hereinafter provided. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 750; 1973 Ed., § 35-902; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(n), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance.”

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-, which was referred to the Committee on . The Bill was adopted on first and second readings on , 1996, and , 1996, respectively. Signed by the Mayor on , 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a

Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

## § 35-1203. Nonresident associations; filing requirements; required showing of authority; examinations.

Any such association coming within the description as set forth in § 35-1201, organized under the laws of any state, country, province, or territory, and not doing business in said District on January 1, 1902, shall be admitted to do business within said District when it shall have filed with the Commissioner of Insurance and Securities a duly certified copy of its charter and articles of association proof of the association’s compliance with the service of process provisions of § 35-102; provided, that such association shall be shown to be authorized to do business in the state, country, province, or territory in which

it is incorporated or organized, in case the laws of such state, country, province, or territory shall provide for such authorization; and in case the laws of such state, country, province, or territory do not provide for any formal authorization to do business on the part of any such association, then such association shall be shown to be conducting its business in accordance with the provisions of §§ 35-1201 to 35-1217; for which purpose the said Commissioner may personally, or by some person to be designated by him, examine into the condition, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association and shall be made within 30 days after demand therefor, and the expense of such examination shall be limited to \$50. Any association doing business under the provisions of §§ 35-1201 to 35-1217 shall be permitted to do business upon filing annually with the Commissioner of Insurance and Securities the certificate of authority of the insurance department of the state, province, or territory in which it is incorporated or organized; provided, however, that in case of failure to file said certificate by any such association, or in case the Commissioner of Insurance and Securities shall deem it necessary, he shall have power, either personally or by some person designated by him, to examine into the condition, affairs, character, business methods, accounts, books, and investments of such association, at its home office, which examination shall be at the expense of the association. The amount of such expense shall not exceed \$100 for associations which have no reserve or emergency fund and \$200 for associations with a reserve or emergency fund. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 751; 1973 Ed., § 35-903; Mar. 21, 1995, D.C. Law 10-233, § 5, 42 DCR 24; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(n), 44 DCR 1730.)

**Cross references.** — As to inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-202, 35-418, and 35-1513.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

**Effect of amendments.** — D.C. Law 10-233 substituted “proof of the association’s compliance with the service of process provisions of § 35-102;” for “and a copy of its bylaws certified to by its secretary or corresponding officer together with an appointment of said Superintendent as the person upon whom process may be served as hereinafter provided:” in the first sentence.

D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” and substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.



**§ 35-1204. Required annual reports; contents.**

Every such association doing business in said District shall, on or before the 1st day of March of each year, make and file with the said Commissioner a report of its affairs and operations during the year ending on the 31st day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms to be provided by the said Commissioner, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the said Commissioner under a separate part entitled "Fraternal Beneficial Associations," and shall contain answers to the following questions:

- (1) Number of certificates issued during the year or members admitted.
- (2) Amount of indemnity effected thereby.
- (3) Number of losses or benefit liabilities incurred.
- (4) Number of losses or benefit liabilities paid.
- (5) The amount received from each assessment for the year.
- (6) Total amount paid members, beneficiaries, legal representatives, or heirs.
- (7) Number and kind of claims for which assessments have been made.
- (8) Number and kind of claims compromised or resisted, and brief statement of reasons.
- (9) Does the association charge annual or other periodical dues or admission fees?
- (10) If so, how much on each \$1,000, annually or per capita, as the case may be?
- (11) Total amount received, from what source, and the disposition thereof.
- (12) Total amount of salaries paid to officers.
- (13) Does the association guarantee in its certificate fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations?
- (14) If so, state amount guaranteed and the security of such guaranty.
- (15) Has the association a reserve or emergency fund?
- (16) If so, how is it created, and for what purpose, the amount thereof, and how invested?
- (17) Has the association more than 1 class?
- (18) If so, how many; and the amount of indemnity in each case.
- (19) Number of members in each class.
- (20) If voluntary, so state; and give date of organization.
- (21) If organized under the laws of said District, under what law and at what time, giving chapter and year, and date of passage of the act.
- (22) If organized under the laws of any state, country, province, or territory, state such fact and the date of organization, giving chapter and year, and date of passage of the act.
- (23) Number of certificates of beneficial membership lapsed during the year.
- (24) Number in force at beginning and end of year; if more than 1 class, number in each class.

(25) Names and addresses of its president, secretary, and treasurer, or corresponding officers. (Mar. 3, 1901, 31 Stat. 1311, ch. 854, § 752; 1973 Ed., § 35-904; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(n), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for

“Superintendent” throughout the introductory paragraph.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.

## § 35-1205. Service of process on nonresident associations.

Repealed. Mar. 21, 1995, D.C. Law 10-233, § 12, 42 DCR 24.

**Legislative history of Law 10-128.** — Law 10-128, the “Omnibus Budget Support Act of 1994,” was introduced in Council and assigned Bill No. 10-575, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 22, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 14, 1994, it was assigned Act No. 10-225 and transmitted to both Houses of Congress for its review. D.C. Law 10-128 became effective on June 14, 1994.

**Legislative history of Law 10-233.** — See note to § 35-1203.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Editor’s notes.** — Former § 35-1205 had also been amended by D.C. Law 10-128.

Section 10(n), of D.C. Law 11- (Act 11-524) purported to amend former § 35-1205 by substituting “Commissioner” and “Commissioner of Insurance” for “Superintendent” and “Superintendent of Insurance,” respectively.

## § 35-1206. Issuance of permit to do business.

The said Commissioner shall, upon the application of any association having the right to do business within said District, as provided by §§ 35-1201 to 35-1217, issue to such association a permit in writing authorizing such association to do business within said District, for which certificate and all proceedings in connection therewith such association shall pay the said Commissioner the fee of \$50, renewal fee, \$50. The Mayor has the authority to amend all the changes and fees referred to in this chapter by way of rulemaking pursuant to subchapter I of Chapter 15 of Title 1. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 754; 1973 Ed., § 35-906; June 14, 1994, D.C. Law 10-128, § 402(b), 41 DCR 2096; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(n), 44 DCR 1730.)

**Cross references.** — As to exemption of fraternal benefit associations from provision of general law governing taxes and license fees for insurance companies, see § 47-2611.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 10-128.** — See note to § 35-1205.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.

**License by estoppel not permitted.** — A corporation which did not question the finding that it was not qualified under this chapter to do insurance business as a fraternal beneficial

association has no "legal right" to a license and may not invoke an estoppel to obtain a license forbidden by statute. *National Hosp. Serv. Soc'y*

*v. Jordan*, 128 F.2d 460 (D.C. Cir.), cert. denied, 317 U.S. 664, 63 S. Ct. 65, 87 L. Ed. 534 (1942).

### § 35-1207. Formation procedure.

Any 9 or more persons, at least one third of whom shall be residents of the District of Columbia, being desirous of forming a fraternal beneficial association for the purposes set forth in § 35-1201 may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise. Such persons shall make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this District and file in the Office of the Recorder of Deeds of said District a certificate or declaration in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated the name or title by which said association shall be known to law; the mode and manner in which the corporate powers granted by §§ 35-1201 to 35-1217 are to be exercised; the name or official title of the officers, trustees, representatives, or other persons by whatever name or title designated, who are to have and exercise the general control and management of its affairs; the place of doing business defined; the limit as to age of applicants for beneficial membership, together with the sworn statement by 3 of said corporators that at least 100 persons eligible under the proposed laws of such association to membership therein have in good faith made application in writing for membership. The Recorder of Deeds, upon the filing of said declaration, shall deliver to such association a certified copy of the papers so filed and recorded in his office, together with a certificate to such association, stating that the provisions in §§ 35-1201 to 35-1217 relative to incorporation have been complied with and that said association becomes thereby authorized to carry on the work of a fraternal beneficial association. Upon filing the certificate or declaration as aforesaid, the persons who shall have signed and acknowledged the same, and their successors and associates, shall, by the provisions of §§ 35-1201 to 35-1217, be a body politic and corporate by the name and style stated in the certificate, and by that name and style shall have perpetual succession, and by said name may sue and be sued, and may have and use a common seal, and the same may alter and change at pleasure, and may make and alter, at times or from time to time, such laws, not inconsistent with the Constitution of the United States or the laws in force in said District, as they may deem necessary for the government of said association. And they and their successors, by their corporate name, shall in law be capable of creating, maintaining, and disbursing a reserve or emergency fund in accordance with its laws and the provisions of §§ 35-1201 to 35-1217, and of taking, receiving, purchasing, and holding real and personal estate necessary for the purpose of such association, and may let, place out at interest, or sell and convey the same as may seem most beneficial for said association. The association shall elect from its members trustees, directors, or managers, by whatever title known in its laws, at such time and place and in such manner as may be specified in its laws, who shall have the control and management of the affairs and funds of said association, a majority of whom shall be a quorum



for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or otherwise, such vacancy shall be filled in such manner as shall be provided by the laws of said association. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 755; Oct. 5, 1962, 76 Stat. 752, Pub. L. 87-757, § 2; 1973 Ed., § 35-907.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

## § 35-1208. Reincorporation or continuance of powers of existing corporations.

The officers, trustees, directors, or governing body of any existing fraternal beneficial association may, by conforming to the requirements of the several provisions of §§ 35-1201 to 35-1217, reincorporate themselves or continue their existing corporate powers under §§ 35-1201 to 35-1217, or change their name, stating in their certificate the original name of such corporation as well as their new name assumed, and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 756; 1973 Ed., § 35-908.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

## § 35-1209. Incorporation of subordinate bodies.

(a) Any subordinate body of any fraternal beneficial association incorporated under the provisions of §§ 35-1201 to 35-1217 or of such association doing business in this District under §§ 35-1201 to 35-1217, where the laws of the governing body of said association do not prohibit the incorporation of their subordinate bodies, may become a body corporate in the manner following: at some regular meeting of such subordinate body a resolution expressing the desire of such subordinate body to be incorporated, and directing its officers to perfect such incorporation, shall be submitted to a vote of the members present, and if two thirds of the members present vote therefor the president and secretary of such subordinate body, or the officers holding relative offices therein, shall prepare articles of association, under their hands and the seal of such subordinate body, setting forth:

(1) The number of members of such subordinate body then in good standing;

(2) The name by which said subordinate body is known; and

(3) The date of its organization and the period for which it is to be incorporated, not exceeding 30 years.

(b) A copy of such articles of association shall be filed with the Recorder of Deeds, and shall by him be recorded, together with the affidavit hereafter named, in a book to be kept for that purpose.

(c) On the execution of said articles of association and before the filing thereof with the Recorder the secretary of such subordinate body shall annex

thereto his affidavit, stating that he is a member in good standing in such subordinate body and occupies the position of secretary, or the office corresponding therewith and that the resolution, a copy of which shall be set forth at length, was regularly passed at a regular meeting of said subordinate body and received the vote of two thirds of the members present and voting and that, to the best of his knowledge and belief, the statements made in the articles of association are true and that such subordinate body is organized and acting under the laws of its respective association, giving the name by which such association is known.

(d) When the foregoing requirements are complied with such subordinate body shall be a body corporate by the name expressed in such articles, and by that name shall be a person in law, capable of suing and being sued in the courts, and taking and holding property of every kind the same as natural persons, and a copy of said articles of association, duly certified to by the Recorder of Deeds, shall be prima facie evidence in all courts and places of the existence and the due incorporation of such subordinate body. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 757; 1973 Ed., § 35-909.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

## § 35-1210. Payment of assessments and/or dues by beneficiary.

No contract with any such association shall be valid when there is a contract, agreement, or understanding between the member and the beneficiary prior to or at the time of becoming a member of the association that the beneficiary, or any person for him, shall pay such member's assessments and dues, or either of them. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 758; 1973 Ed., § 35-910.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

waived when the association has no knowledge of the agreement between the insured and the beneficiary whereby the latter pays the assessment. *Columbian Fraternal Ass'n v. Smith*, 297 F. 887 (D.C. Cir. 1924).

**Knowledge of agreement.** — Section is not

## § 35-1211. Exemption of benefits from legal process.

The money or other benefit, charity, relief, or aid to be paid, provided or rendered by any association authorized to do business under §§ 35-1201 to 35-1217 shall not be liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, or by operation of law, to pay any debt or liability of a certificate holder or of any beneficiary named in the certificate, or any person who may have any right thereunder. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 759; 1973 Ed., § 35-911.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

### § 35-1212. Meetings.

Any such association organized under the laws of said District may provide for the meetings of its legislative or governing body in any state, country, province, or territory wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects as if such meetings were held within said District; and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any state, country, province, or territory shall be valid as if cast within said District. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 760; 1973 Ed., § 35-912.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

### § 35-1213. Fraudulent representations.

Any person, officer, member, or examining physician who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership or for restoration to membership or for the purpose of obtaining any money or benefit in any association transacting business under §§ 35-1201 to 35-1217 shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$500, or imprisonment in the United States Jail in said District for not less than 30 days nor more than 1 year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath required or authorized by §§ 35-1201 to 35-1217, shall be guilty of perjury. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 761; June 30, 1902, 32 Stat. 534, ch. 1329, § 761; 1973 Ed., § 35-913.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1214, 35-1215, 35-1216, 35-1217, and 35-1302.

### § 35-1214. Violations of provisions or injunction.

Any such association refusing or neglecting to make the report as provided in §§ 35-1201 to 35-1217 shall be excluded from doing business within the District. The Commissioner of Insurance and Securities must, within 60 days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of §§ 35-1201 to 35-1217, give notice in writing to the attorney for said District, who shall immediately commence an action



against such association to enjoin the same from carrying on any business. An injunction against any such association may be granted on application by the Mayor of said District at the request of the said Commissioner. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it (provided, the court shall find that such association was in default, as charged), whereupon the Commissioner of Insurance and Securities shall reinstate such association, and not until then shall such association be allowed again to do business in said District. Any officer, agent, or person acting for any association or subordinate body thereof, within said District while such association shall be so enjoined or prohibited from doing business pursuant to §§ 35-1201 to 35-1217, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$25 nor more than \$200, or by imprisonment in said Jail not less than 30 days nor more than 1 year, or by both such fine and imprisonment, in the discretion of the court. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of §§ 35-1201 through 35-1215 by any association, or any rules or regulations issued under the authority of these sections, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of these sections shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 762; 1973 Ed., § 35-914; Oct. 5, 1985, D.C. Law 6-42, § 470(g), 32 DCR 4450; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(n), 44 DCR 1730.)

**Cross references.** — As to quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1215, 35-1216, 35-1217, and 35-1302.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” and substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 6-42.** — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211, abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-1202.

### § 35-1215. Individual violations of provisions.

Any person who shall act within said District as an officer, agent, or otherwise, for any association which shall have failed, neglected, or refused to comply with, or shall have violated any of the provisions of §§ 35-1201 to 35-1217, or shall have failed or neglected to procure from the said Commissioner a proper certificate of authority to transact business as provided for in §§ 35-1201 to 35-1217, shall be subject to the penalty provided in § 35-1214 for the misdemeanor therein specified. To “transact business” or “doing business” under §§ 35-1201 to 35-1217 means the writing of applications and the soliciting of new members so far as the penalty of §§ 35-1201 to 35-1217 applies thereto. It shall not be unlawful for any organization under § 35-1201 to continue the operation of its lodges or branches except in securing new members. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of §§ 35-1201 through 35-1215 by any person acting as officer, agent, or otherwise for any association, or any rules or regulations issued under the authority of these sections, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of these sections shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 763; 1973 Ed., § 35-915; Oct. 5, 1985, D.C. Law 6-42, § 470(h), 32 DCR 4450; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1216, 35-1217, and 35-1302.

**Legislative history of Law 6-42.** — See note to § 35-1214.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.

### § 35-1216. Exceptions to provisions — Associations for profit; certain specified organizations.

Nothing in §§ 35-1201 to 35-1217 shall be construed to apply to any corporation, society, order, or association carrying on the business of life, health, casualty, or accident insurance for profit or gain, and they shall only apply to fraternal beneficial associations as defined by § 35-1201, and nothing contained in §§ 35-1201 to 35-1217 shall be construed to affect any grand or subordinate lodge or branch of any such fraternal beneficial societies, orders, or associations which limits its certificate holders to a particular religious denomination or to the employees of a particular town or city, designated firm, business house, or corporation, or department or branch of the United States government, nor the grand or subordinate lodges of the Independent Order of Odd Fellows, nor any grand or subordinate lodge, or other body of Free and Accepted Masons, nor the grand or any subordinate lodge of the Knights of Pythias, nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the National Council or any subordinate council of the Daughters of America, nor the Supreme Council of the Knights of Columbus or any subordinate council thereof, or similar orders,

associations, or societies that do not have as their principal object the issuance of benefit certificates of membership in case of death or the payment of sick, funeral, or death benefits exceeding in amount \$100. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 764; Dec. 12, 1928, 45 Stat. 1021, ch. 24; 1973 Ed., § 35-916.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1217, and 35-1302.

### **§ 35-1217. Same — Associations or individuals using name of previously existing corporation.**

The provisions of §§ 35-1201 to 35-1217 shall not extend to nor apply to any association or individual who shall, in the certificate filed with the Recorder of Deeds, use or specify a name or style the same as that of any previously existing incorporated fraternal beneficial association in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 765; 1973 Ed., § 35-917.)

**Section references.** — This section is referred to in §§ 35-202, 35-1201, 35-1202, 35-1203, 35-1206, 35-1207, 35-1208, 35-1209, 35-1211, 35-1213, 35-1214, 35-1215, 35-1216, and 35-1302.

### **§ 35-1218. Insurance and/or annuities upon lives of children — Applications.**

Any fraternal benefit society authorized to do business in the District of Columbia may provide in its laws, in addition to other benefits provided for therein, for insurance and/or annuities upon the lives of children, at any age, upon the application of some adult person, as the laws of such society may provide. Any such society may, at its option, organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. (May 29, 1928, 45 Stat. 953, ch. 862, § 2; 1973 Ed., § 35-918.)

**Section references.** — This section is referred to in § 35-1221.

### **§ 35-1219. Same — Computation of contributions.**

Contributions to be made upon such certificates shall be based upon the Standard Industrial Mortality Table or the English Life Table No. 6, or the society may use a table based upon its own juvenile experience of at least 10 years and covering not less than 100,000 lives with a rate of interest not greater than 4 per centum per annum, or upon a higher standard. (May 29, 1928, 45 Stat. 953, ch. 862, § 3; 1973 Ed., § 35-919.)

**Section references.** — This section is referred to in §§ 35-1220 and 35-1221.



**§ 35-1220. Same — Required reserve.**

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in § 35-1219. (May 29, 1928, 45 Stat. 953, ch. 862, § 4; 1973 Ed., § 35-920.)

**Section references.** — This section is referred to in § 35-1221.

**§ 35-1221. Same — Powers of society.**

Any society shall have full power to provide for means of enforcing payment of contributions, designation of beneficiaries, and changing such designations, and in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith, not at variance with the provisions of §§ 35-1218 to 35-1221. (May 29, 1928, 45 Stat. 953, ch. 862, § 5; 1973 Ed., § 35-921.)

**§ 35-1222. Separation of fraternal and insurance activities — Corporations affected.**

Any corporation heretofore organized by a special act of Congress and vested with the powers, rights, and privileges of fraternal and benevolent corporations under the laws of the District of Columbia and engaged in carrying on fraternal activities and fraternal beneficial insurance activities in which are maintained reserves not lower than the reserves required by the American Experience Table of Mortality with 3½% interest per annum is authorized and empowered, by a majority vote of its supreme legislative body and with the approval of the Commissioner of Insurance and Securities as hereinafter provided, to divide and separate such activities and continue the same as separate and distinct corporations in the manner set forth in §§ 35-1223 to 35-1228. (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 1; 1973 Ed., § 35-922; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(o), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1223, 35-1224, 35-1226, and 35-1227.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance of the District of Columbia."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.

**§ 35-1223. Same — Certificate of corporation to be filed; contents.**

A certificate under the seal of said corporation shall be filed in the Office of the Commissioner of Insurance and Securities and which certificate shall set forth the facts as follows:

(1) That said corporation is organized under special act of Congress giving appropriate reference thereto;

(2) That said corporation is engaged in carrying on fraternal activities and fraternal beneficial insurance activities, with appropriate detailed information touching each of such activities, including the name of the corporation, its officers, numbers, and classes of membership, benefits carried, and other similar appropriate information;

(3) That the fraternal beneficial insurance activities of said corporation maintain reserves not lower than the reserves required by the American Experience Table of Mortality with 3½% interest per annum;

(4) That the supreme legislative body, at a regular or duly called special convention thereof, had, by a majority vote, authorized the division and separation of its activities and the amendment of its charter, under §§ 35-1222 to 35-1228;

(5) That the name under which the fraternal activities of such corporation shall be carried on shall be ".....";

(6) That the name under which the insurance activities of such corporation shall be carried on shall be ".....";

(7) That until otherwise designated by its directors, its principal office shall be at .....; and

(8) That until otherwise provided the number of its directors shall be 9, and that until their successors shall be elected the names of such directors shall be ..... (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 2; 1973 Ed., § 35-923; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1222, 35-1224, 35-1226, and 35-1227.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.

## § 35-1224. Same — Approval and certificates of Commissioner required.

The Commissioner of Insurance and Securities shall examine such certificate, and if satisfied of the truth of the matters set forth in such certificate the Commissioner of Insurance and Securities may approve the same and may issue his certificates showing compliance herewith, which certificates shall be recorded in the Office of the Recorder of Deeds for the District of Columbia, and such certificates when so issued shall be conclusive evidence that such corporation has complied with all of the requirements of §§ 35-1222 to 35-1228 as conditions precedent to the separation and division of its activities as herein provided. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 3; 1973 Ed., § 35-924; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(o), 44 DCR 1730.)

**Cross references.** — As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in §§ 35-1222, 35-1223, 35-1226, and 35-1227.

**Effect of amendments.** — D.C. Law 11-

(Act 11-524) substituted the first occurrence of "Commissioner of Insurance and Securities" for "Superintendent of Insurance of the District of Columbia"; and substituted the second occurrence of "Commissioner of Insurance and Securities" for "Superintendent of Insurance."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished. —**  
See note to § 35-1202.

### **§ 35-1225. Same — General powers, duties, liabilities and structure of activities.**

From and after the issuance of such certificates by the Commissioner of Insurance and Securities:

(1) The fraternal activities and the fraternal beneficial insurance activities of such corporation shall be divided and separated;

(2) All of the fraternal activities of said corporation shall continue unchanged under the name chosen therefor in such certificate, which may be the name of the original corporation or any other name chosen therefor, and in it shall remain vested, without the necessity for any further act or deed, all of the fraternal powers, activities, and functions, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such fraternal activities; and it shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected therewith; and

(3) All of the insurance activities of said corporation shall continue, under the name chosen therefor in such certificate, as a mutual legal reserve life insurance corporation, and in it shall remain vested without the necessity for any further act or deed all of the fraternal beneficial insurance powers, activities, and functions thereof, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such insurance activities; it shall be absolved and relieved from any and all responsibility, obligations, and liabilities connected with the fraternal activities of the mother corporation, and shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected with and arising from such insurance activities; it shall have authority to make all and every insurance and reinsurance appertaining to or connected with life, accident, health, and disability risks of whatever kind or nature and to grant, purchase, or dispose of annuities and to furnish any aid or service to promote the health or safety of its members or their beneficiaries; such activities to be carried on and conducted for the mutual benefit of its members and their beneficiaries and not for profit, subject to the supervisions imposed by the law of the District of Columbia relating to mutual legal reserve life insurance corporations; the number of directors shall be fixed by the bylaws and shall be at least 9, who shall be elected by the insured members; the terms of the directors shall be 3 years from the date of their election, and such directors may be classified so that their terms shall not all expire at the same time; the election shall be held annually, and such directors shall elect the president and other officers and shall have power to make and promulgate such bylaws, rules, and regulations as may be deemed necessary and proper for the elections herein provided and for the disposition and management of the business, funds, property, and effects of said corporation and shall be vested with the



control and supervision of all of the business affairs of said corporation; and said corporation shall have all the powers, rights, and privileges on or after April 12, 1930, held and exercised by mutual legal reserve life insurance companies within the District of Columbia; in any action or suit by or against such corporation the policies, certificates, and other evidences of insurance obligation issued and executed by the mother corporation shall be admissible in evidence without further proof, and shall constitute prima facie evidence of the same obligations against said corporation as against such mother corporation. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 4; 1973 Ed., § 35-925; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1222, 35-1223, 35-1224, 35-1226, and 35-1227.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.

## § 35-1226. Same — Continuation and supervision of original corporation.

The proceedings provided in §§ 35-1222 to 35-1228, including the amendment of the charter, the issuance of the certificates by the Commissioner of Insurance and Securities, the division of assets and liabilities or any other act done under said sections, shall not be or constitute a dissolution of the original corporation, but the resulting corporation shall, so separated and divided, be continuations thereof and under the names as herein authorized, be separate legal entities, and the insurance corporation herein provided for shall be subject to supervision, regulation, and control as a mutual legal reserve life insurance corporation. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 5; 1973 Ed., § 35-926; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(o), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1222, 35-1223, 35-1224, and 35-1227.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance.”

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1202.

**Department of Insurance abolished.** — See note to § 35-1202.

## § 35-1227. Same — Existing contracts preserved; Congressional powers reserved.

Nothing contained in §§ 35-1222 to 35-1228 and nothing done under said sections shall impair or operate to impair the obligations of any contract; and said sections and any certificate issued thereunder shall be subject to the power of Congress to alter, amend, or repeal at will. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 6; 1973 Ed., § 35-927.)

**Section references.** — This section is referred to in §§ 35-1222, 35-1223, 35-1224, and 35-1226.

**§ 35-1228. Same — Applicability of state and District laws.**

Such corporation shall be subject to all the laws of the respective states, including the District of Columbia, with respect to similar mutual legal reserve life insurance corporations. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 7; 1973 Ed., § 35-928.)

**Section references.** — This section is referred to in §§ 35-1222, 35-1223, 35-1224, 35-1226, and 35-1227.

CHAPTER 13. INSURANCE AGENTS OTHER THAN LIFE.

Sec.

35-1301, 35-1302. [Repealed.]

**§§ 35-1301, 35-1302. Required licenses for agents or brokers; compensation to unlicensed agents prohibited; violations; exemption of fraternal associations from provisions; licenses required for authorized solicitors; assignment of licenses; violations.**

Repealed. April 9, 1997, D.C. Law 11-227, § 16(b), 44 DCR 140.

**Cross references.** — As to life insurance agents and brokers, see §§ 35-425 to 35-428.

As to transacting marine insurance business for unauthorized company, see § 35-1423.

As to marine insurance agents, see § 35-1424.

As to fire, casualty, and marine insurance agents, see §§ 35-1534 to 35-1545.

As to refund of fees when license refused, see § 47-1318.

As to authority of the Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Legislative history of Law 11-227.** — Law 11-227, the “Insurance Agents and Brokers Licensing Revision Act of 1996,” was introduced in Council and assigned Bill No. 11-523, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-455 and transmitted to both

Houses of Congress for its review. D.C. Law 11-227 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Editor’s notes.** — Former § 35-1301 was also amended by § 10(p) of D.C. Law 11- (Act 11-524), projected to become law on May 22, 1997. The amendment by D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance of the District” in the first sentence.



## CHAPTER 13A. INSURANCE AGENTS AND BROKERS LICENSING.

Sec.	Sec.
35-1321. Definitions.	35-1328. Hearings.
35-1322. Duties of agents and brokers.	35-1329. Surrender of license; loss or destruction of license.
35-1323. General license requirements.	35-1330. Termination reports.
35-1324. Licensing procedure.	35-1331. Representatives of fraternal benefit societies.
35-1325. Exemption from examination and prelicensing education requirements.	35-1332. Countersignature and related laws.
35-1326. License denial, nonrenewal, or termination.	35-1333. Temporary licensing.
35-1327. License continuation; expiration.	35-1334. Rules and regulations.

**§ 35-1321. Definitions.**

For the purposes of this chapter, the term:

- (1) "Commissioner" means the Commissioner of Insurance and Securities.
- (2) "District" means the District of Columbia.

(3) "Insurance agent" means an individual, partnership, or corporation appointed by an insurer to solicit applications for a policy of insurance or to negotiate a policy of insurance on its behalf. An individual, partnership, or corporation not duly licensed as an insurance agent or insurance broker who solicits a policy of insurance on behalf of an insurer shall be an insurance agent within the intent of this chapter, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which an insurance agent of such company is subject, and such company by compensating such person through any of its officers, agents, or employees for soliciting policies of insurance shall thereby accept and acknowledge such person as its agent in such transaction.

(4) "Insurance broker" means any individual, partnership, or corporation who, for compensation, not being a licensed agent for the company in which a policy of insurance is placed, acts or aids in any manner in negotiating contracts for insurance or placing risks or effecting insurance for a party other than himself or itself. An individual, partnership, or corporation not licensed as an insurance broker who solicits a policy of insurance on behalf of others or transmits for others an application for a policy of insurance to or from an insurance company, or offers or assumes to act in the negotiations of such insurance, shall be an insurance broker within the intent of this chapter, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which such licensed brokers are subject.

(5) "Person" means an individual, corporation, partnership, association, or other entity.

(6) "Producer broker" means the particular broker or agent dealing directly with the party seeking insurance.

(7) "State" means all states within the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, and the District of Columbia. (Apr. 9, 1997, D.C. Law 11-227, § 2, 44 DCR 140.)

**Legislative history of Law 11-227.** — Law 11-227, the “Insurance Agents and Brokers Licensing Revision Act of 1996,” was introduced in Council and assigned Bill No. 11-523, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted

on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-455 and transmitted to both Houses of Congress for its review. D.C. Law 11-227 became effective on April 9, 1997.

## § 35-1322. Duties of agents and brokers.

(a) Every agent who solicits or negotiates an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer, shall be regarded as representing the insurer and not the insured or his beneficiary. This provision shall not affect the apparent authority of an agent.

(b) Every insurance broker who solicits an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer issuing any policy upon such application, shall be regarded as representing the insured or his beneficiary and not the insurer; except, any company which directly or through its agents delivers in the District to any insurance broker a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself, shall be deemed to have authorized such broker to receive on its behalf payment of any premium which is due on such policy of insurance at the time of its issuance or delivery. (Apr. 9, 1997, D.C. Law 11-227, § 3, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

## § 35-1323. General license requirements.

(a) *License required; liability; validity of contract; penalty.* (1) No person, partnership, association, or corporation shall act as or hold himself out to be an insurance agent or insurance broker unless duly licensed.

(2) An insurance agent who is licensed in the District of Columbia may solicit and submit an application to an insurer for which the agent has no appointment. The insurer must either reject the application or apply for the agent’s appointment with the Department of Insurance and Securities within 30 days of receipt of the insurance application. The insurer must receive approval of the appointment of the agent before any commissions or other remuneration is paid.

(3) An insurance agent or insurance broker may receive qualification for a license in one or more of the following lines:

(A) Life insurance, annuity contracts, variable annuities and variable life insurance;

(B) Property and casualty insurance; and

(C) Bail bonds.

(4) No special license is issued for accident and health insurance. A life agent may solicit all lines that his appointing company or companies are licensed to write, including ordinary, industrial, variable annuities, annuities, variable life, accident, and health. A licensed property and casualty agent may

solicit all kinds of insurance written by the licensed company or companies he places his business with, including accident and health insurance.

(b) *Licensing of organizations.* (1) A partnership or corporation may be licensed as an insurance agent or insurance broker. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in the District in soliciting or negotiating policies of insurance shall be registered with the Commissioner as to its license, and each such member, officer, director, stockholder, or employee shall be subject to all requirements of this act, and the Commissioner shall have authority at any time to require the applicant to disclose fully the identity of all members, officers, directors, stockholders, and employees. The Commissioner may, in his discretion, refuse to issue or renew a license in the name of any partnership or corporation if he is not satisfied that a member, officer, director, stockholder, or employee thereof who may materially influence the applicant's conduct meets the standards of this act applicable to persons applying as individuals.

(2) The partnership or corporate licensee shall notify the Commissioner, within 10 working days, of every change relative to the individuals registered with the corporate or partnership license.

(c) *Controlled business.* (1) The Commissioner shall not grant, renew, continue, or permit to continue any license if he finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. For the purpose of this subsection, the term "controlled business" means:

(A) Insurance written on the interests of the licensee or those of his immediate family or of his employer; or

(B) Insurance covering himself or members of his immediate family or a corporation, association, or partnership, or the officers, directors, substantial stockholders, partners, or employees of such a corporation, association, or partnership, of which he or a member of his immediate family is an officer, director, substantial stockholder, partner, associate, or employee; provided, however, that nothing in this section shall apply to insurance written in connection with credit transactions.

(2) Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business, if the Commissioner finds that during any 12-month period the aggregate commissions earned from such controlled business has exceeded 25% of the aggregate commission earned on all business written by such applicant or licensee during the same period.

(d) *Commissions; payment; acceptance.* — No insurer, insurance agent, or insurance broker shall pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent or insurance broker within the District, unless such person held at the time such services were performed a valid license for that line of insurance as required by the laws of the District for such services; nor shall any person other than a person duly licensed by the District as an insurance agent or insurance broker at the time such services were performed accept any such commission, brokerage, or other valuable consideration; provided, however, any person duly



licensed under this act may pay his commissions, assign his commissions, or direct that his commissions be paid to a partnership of which he is a member, employee, or agent, or to a corporation of which he is an officer, employee, or agent; and, provided further, that this section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

(e) *License contents.* (1) The license shall state the name, resident address, and social security or IRS identification number of the licensee, date of issue, the renewal or expiration date, the line or lines of insurance covered by the license, and such other information as the Commissioner deems proper for inclusion in the license.

(2) The license of an insurance agent shall specify the name of the particular insurer by which the licensee is appointed. An insurance agent may represent as many insurers as may appoint him in accordance with this chapter.

(f) *Term of license.* — All licenses issued pursuant to this chapter shall continue in force for an indefinite period upon payment of a biennial renewal fee, until expired, suspended, revoked, or otherwise terminated. Continuation fees shall be as established by the Commissioner and shall be due by the date established by the Commissioner. Requests for continuation of an agent's or broker's license shall be made by the licensee. Unless a request for continuation, accompanied by the appropriate fee, is received by the established due date, the license will be deemed to have expired as of that date. A request for license continuation which is received by the Commissioner within 30 days after the expiration date may be effectuated, at the discretion of the Commissioner, if accompanied by a continuation fee 2 times the amount otherwise required, except that the Commissioner may waive imposition of the additional fee for good cause shown for the delay.

(g) *Exceptions to licensing requirements.* — No license as an insurance agent or insurance broker shall be required of the following:

(1) Any regular salaried officer or employee of an insurance company, or of a licensed insurance agent or insurance broker, which employee devotes full time to clerical and administrative services, with incidental taking of insurance applications and receiving premiums in the office of the employer if the employee does not receive any commissions on such applications and his compensation is not varied by the volume of applications or premiums taken or received by such employee;

(2) Persons who secure and furnish information for the purpose of group or wholesale life insurance or annuities; or group, blanket, or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder or otherwise assisting in administering such plans, where no commission is paid for such service;

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance

company; provided, that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance;

(4) Employees of a creditor who enroll debtors under a group policy, provided such employees receive no commission; or

(5) Persons representing fraternal organizations who are excluded in accordance with the provisions of § 35-1331. (Apr. 9, 1997, D.C. Law 11-227, § 4, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

**Section not unconstitutionally vague.** — Where petitioner was denied a license based on a prior felony conviction, the statute was not unconstitutionally vague as applied to him. *Taylor v. Montgomery*, App. D.C., 413 A.2d 923 (1980).

**Weight of Commissioner's decision concerning renewal.** — The decision of the Superintendent of Insurance for the District of Columbia (now Commissioner of Insurance and Securities) as to whether a general insurance agent's license should be renewed must be given weight because of Commissioner's special position in congressional regulatory plan. *Jordan v. Silverman*, 294 F.2d 916 (D.C. Cir. 1961).

**Felony conviction as evidence of untrustworthiness.** — A felony conviction

may not only be considered as evidence of untrustworthiness in a suspension or revocation proceeding, but also at the time at which the license is originally considered. *Taylor v. Montgomery*, App. D.C., 413 A.2d 923 (1980).

**Findings of fact to be made by Commissioner.** — In a proceeding before the Superintendent of Insurance (now Commissioner of Insurance and Securities) on a complaint charging an insurance solicitor with misrepresenting the advantages of exchange of life insurance policies, the Superintendent (now Commissioner) is required to make findings of fact disclosing particular circumstances upon which the determination of misrepresentation rests. *Coffey v. Jordan*, 275 F.2d 1 (D.C. Cir. 1959).

## § 35-1324. Licensing procedure.

The Commissioner shall not issue, continue, or permit to continue any license of an insurance agent or insurance broker except in compliance with the following:

(1) Application shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner.

(2) The application for an insurance agent license shall be accompanied by a written appointment. Such appointment shall be made by an officer of the insurer designating the applicant as an insurance agent for such lines of insurance as the applicant will be authorized to write for said insurer. All appointments for any licensee shall be submitted on behalf of the appointing insurer, on a form prescribed by the Commissioner, and shall remain in force until the annual renewal date which shall be the date from the first of the month which the application for license is made, and shall expire on the 30th day of April next succeeding, unless prior thereto it is revoked or suspended by the Commissioner or authority to act for the company is terminated.

(3) Every applicant for an insurance agent licensed under this chapter, except a partnership or corporation, must be 18 years or more of age.

(4) All applications shall be accompanied by the applicable fees. An appointment shall terminate upon failure to pay the prescribed annual renewal fee.

(5) The Commissioner shall issue an insurance agent's license or insurance broker's license to any duly qualified resident or nonresident, individual, partnership, or corporation of the District as follows:

(A) An applicant may qualify as a resident if he resides in the District or maintains his principal place of business in the District. Any license issued pursuant to any such application claiming residency for licensing purposes, as defined herein, in the District shall constitute an election of residency in the District and shall be void if the licensee, while holding a resident license in the District, also holds or makes application for a license in, or thereafter claims to be a resident of, any other state or other jurisdiction or ceased to be a resident of the District; provided, however, if the border of any other state is contiguous with the District line, the applicant may qualify as a resident in such states and hold a license from each state and the District.

(B)(i) An applicant may qualify for a license under this chapter as a nonresident only if he holds a like license in the United States, a province of Canada, or other foreign country. A license issued to a nonresident of the District shall grant the same rights and privileges afforded a resident licensee.

(ii) A nonresident of the District may be licensed without taking an otherwise required written examination if the Commissioner of the state of the applicant's residence certifies that the applicant has passed a similar written examination, or has been a continuous holder, prior to the time such written examination was required, of a license like the license being applied for in the District.

(C) An applicant for any license under this chapter must be deemed by the Commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

(D) Resident and nonresident property and casualty brokers shall, as a prerequisite to the insurance of a license, file with the Commissioner a corporate surety bond in an amount to be determined according to regulations issued pursuant to this chapter for the benefit of any person who may suffer loss resulting from fraud and dishonesty on the part of said resident or nonresident broker.

(E) Each applicant for an insurance broker's license must have had not less than 2 years experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm during the 3 years immediately preceding the date of application. The application for an insurance broker's license must be accompanied by an affidavit from the employer or insurer to the effect that the applicant was so engaged in such required responsible insurance duties.

(F)(i) Except as provided in § 35-1325, the Commissioner shall subject each applicant for license as an insurance agent or insurance broker to a written examination as to the applicant's competence to act as such licensee, which he must personally take and pass to the satisfaction of the Commissioner.

(ii) If the applicant is a partnership or corporation, the examination shall be taken by each individual who is to be named in or registered as to the corporate or partnership license.



(iii) Each examination for a license shall be approved for use by the Commissioner and shall reasonably test the applicant's knowledge of the lines of insurance, policies, and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent insurance laws of the District.

(iv) All the lines of insurance which the applicant proposes to transact under the license applied for shall have a separate examination.

(v) The Commissioner shall have the authority to establish by rule the procedures, times, and places of examination and reexamination.

(vi) The Commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination as between individuals examined.

(vii) The applicant must pass the examination with a grade determined by the Commissioner to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification. Within 10 days after the examination, the Commissioner shall inform the applicant, where applicable, whether or not the applicant has passed. Formal evidence of said licensing shall be issued by the Commissioner to the licensee within a reasonable time.

(G) An applicant may apply to the Commissioner to take the examination for a license without taking the required study course if the applicant submits proof in a form acceptable to the Commissioner that such individual has attained equivalent knowledge through employment experience as determined by the Commissioner. The employment experience shall have involved the performance of responsible insurance duties in connection with the kind of insurance for which the applicant has applied for a license. The applicant shall register for and attain a passing grade on such examination within 1 year of completion of the required employment experience.

(H)(i) If the Commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and promptly notify the applicant and the appointing insurer, in writing, of such denial, stating the grounds therefore.

(ii) If a license is refused, the Commissioner shall promptly refund the appointment fee tendered with the license application. All other fees accompanying the application for license as insurance agent or insurance broker shall be deemed earned and shall not be refundable.

(I) All licensees shall notify the Commissioner of any change in his residential or business address within 30 days of the change. (Apr. 9, 1997, D.C. Law 11-227, § 5, 44 DCR 140.)

**Section references.** — This section is referred to in § 35-1329.

**Legislative history of Law 11-227.** — See note to § 35-1321.

## **§ 35-1325. Exemption from examination and prelicensing education requirements.**

The following applicants shall be exempt from the requirement for a written examination:

(1) Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like license in the District, other than a temporary license, within the 12 months next preceding the date of application, unless such previous license was revoked, suspended, or continuation or renewal thereof was refused by the Commissioner;

(2) An applicant for an agents' license for the same line or lines of insurance for which the applicant had been granted in the District a license as a solicitor, soliciting agent, salaried company employee, or general agent within 12 months preceding the date of application;

(3) An applicant who has been licensed under a like license in another state within 12 months prior to his application for a license in the District, and who files with the Commissioner the certificate of the public official having supervision of insurance in such other state as to the applicant's license and good standing in such state;

(4) An applicant for a license as a property and casualty agent and broker who furnishes to the satisfaction of the Commissioner proof that the applicant has successfully completed all of the examinations prescribed by the Society of Chartered Property and Casualty Underwriters, Incorporated, and has satisfied all other requirements leading to the degree of a Chartered Property and Casualty Underwriter, or other private examinations for special competency in property and casualty insurance which the Commissioner by rule determines have equivalent requirements and standards; and

(5) An applicant for a license as a life insurance agent or broker who furnishes to the satisfaction of the Commissioner proof that the applicant has successfully completed all of the examinations prescribed by the Society of Chartered Life Underwriters of the American College of Life Underwriters, and has satisfied all other requirements leading to the degree of Chartered Life Underwriter, or other private examinations for special competency in life insurance which the Commissioner by rule determines have equivalent requirements and standards. (Apr. 9, 1997, D.C. Law 11-227, § 6, 44 DCR 140.)

**Section references.** — This section is referred to in § 35-1324.

**Legislative history of Law 11-227.** — See note to § 35-1321.

## § 35-1326. License denial, nonrenewal, or termination.

(a) The Commissioner may suspend, revoke, or refuse to continue, renew, or issue any license issued under this chapter if, after notice to the licensee and to the insurer represented and hearing, he finds as to the licensee any one or more of the following conditions:

(1) Any materially untrue statement in the license application;

(2) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance;

(3) Violation of, or noncompliance with, any insurance laws, or for violation of any lawful rule, regulation, or order of the Commissioner or of a commissioner or of another state;

(4) Obtaining or attempting to obtain any such license through misrepresentation or fraud;

(5) Improperly withholding, misappropriating, or converting to his own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of his insurance business;

(6) Misrepresentation of the terms of any actual or proposed insurance contract;

(7) Conviction of a felony or misdemeanor involving moral turpitude;

(8) The licensee has been found guilty of any unfair trade practice or fraud defined in District law;

(9) In the conduct of his affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible;

(10) His license has been suspended or revoked in any other state, province, district, or territory;

(11) The licensee has forged another's name to an application for insurance; or

(12) The applicant has been found to have been cheating on an examination for an insurance license.

(b) In the event that the action by the Commissioner is to not renew a license or to deny an application for a license, he shall notify the applicant or licensee and advise the applicant or licensee in writing of the reasons for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make a written demand upon the Commissioner within a reasonable time for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. Such a hearing shall be held within 30 days from the date of receipt by the Commissioner of the written demand by the applicant and shall be held pursuant to § 35-1328.

(c) The license of a partnership or corporation may be suspended, revoked, or refused if the Commissioner finds, after a hearing, that an individual licensee's violation was known or should have been known by 1 or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and such violation was not reported to the Department of Insurance and Securities nor corrective action taken in relation thereto.

(d) In lieu of, or in addition to, suspension, revocation, or noncontinuation of a license, the Commissioner may impose a civil penalty of not more than \$5,000 upon a licensee whose license is subject to suspension, revocation, or noncontinuation under this section, and may additionally require restitution to any person who has suffered financial injury or damage as a result of the violation of any provision of this chapter.

(e) No licensee whose license has been revoked under this chapter shall be entitled to any license under this chapter for a period of 3 years after revocation. (Apr. 9, 1997, D.C. Law 11-227, § 7, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

**Authority to deny renewal differs from authority to deny original application.** —

The Superintendent's (now Commissioner's) authority to refuse to renew an insurance broker's license and the considerations to govern his action with regard to such renewal are not



the same as his authority to deny the original application, and may not be exercised for the same reasons. *Atlantic Ins. Agency, Inc. v. Jordan*, 229 F.2d 758 (D.C. Cir. 1955).

**Presumption of trustworthiness on renewal.** — Once the Superintendent (now Commissioner) has found a corporation to be trustworthy and has issued it a license as an insurance broker, a presumption of trustworthiness continues, though the license renewal application will be subject to conditions of this section specifying when renewal may be denied. *Atlantic Ins. Agency, Inc. v. Jordan*, 229 F.2d 758 (D.C. Cir. 1955).

The Superintendent (now Commissioner) is not authorized to deny renewal of license as insurance broker to a corporation which in every respect has originally been found by him to be qualified under, and to have complied with, the appropriate statutes, even though it later develops that an ownership interest in the corporation has been acquired by a person deemed by the Superintendent to be untrustworthy. *Atlantic Ins. Agency, Inc. v. Jordan*, 229 F.2d 758 (D.C. Cir. 1955).

**Refusal to renew for misrepresentation.** — Where a policywriting agent for an insurance company violated the insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled, and that agent represented that it had the authority to solicit and procure policies of insurance when it had no license to do so, the refusal of the Superintendent (now Commissioner) of Insurance to renew the agent's license was proper. *Columbia Auto*

*Loan, Inc. v. Jordan*, 196 F.2d 568 (D.C. Cir. 1952).

**Commissions on policies where licensee is to pay premiums.** — Purpose of denial of license which was sought for the purpose of obtaining commissions on policies on which the licensee is to pay premiums is to outlaw rebates, not to exclude building and loan associations from obtaining licenses and collecting commissions on insurance covering property securing association's loans. *Goodman v. Perpetual Bldg. Ass'n*, 320 F. Supp. 20 (D.D.C. 1970).

This section does not preclude issuing a license in all instances when the license is sought to obtain commissions on policies on which premiums are paid or to be paid by person who receives direct or indirect benefit, but only when such license is primarily sought for the restricted purpose. *Goodman v. Perpetual Bldg. Ass'n*, 320 F. Supp. 20 (D.D.C. 1970).

**Corporate insurance broker.** — To the extent that a corporation is to act as an insurance broker in the District of Columbia, it is not the corporate entity but its personnel actually performing functions of broker that are to be examined, and if the license is to be issued to the corporation, the names of individual, competent qualified personnel must appear thereon. *Atlantic Ins. Agency, Inc. v. Jordan*, 229 F.2d 758 (D.C. Cir. 1955).

**Building and loan associations.** — This chapter specifically authorizes building and loan associations to be licensed and to act as insurance agents and brokers. *Goodman v. Perpetual Bldg. Ass'n*, 320 F. Supp. 20 (D.D.C. 1970).

## § 35-1327. License continuation; expiration.

(a) All licenses issued under this chapter shall continue in force for an indefinite period, upon payment of an annual continuation fee, until expired, suspended, revoked, or otherwise terminated. Continuation fees shall be as established by the Commissioner and shall be due by April 30 of every other year.

(b) Requests for continuation of an agent's or broker's license shall be made by the licensee.

(c) The Commissioner shall establish continuing education requirements by rule for all agents and brokers licensed to do business in the District. Licensees who furnish evidence of compliance with continuing education requirements in their state of residence shall be exempted from the District's continuing education requirements, provided that the insurance supervisory official of the agent's state of residence will grant similar exemptions to District residents who have satisfied the District's continuing education requirements.

(d) Unless a request for continuation, accompanied by the appropriate fee, is received by April 30 of every other year, the license will be deemed to have expired as of that date. A request for license continuation which is received by the Commissioner within 30 days after the expiration date may be effectuated

if accompanied by a continuation fee 2 times the amount otherwise required, except that the Commissioner may waive imposition of the additional fee for good cause for the delay. (Apr. 9, 1997, D.C. Law 11-227, § 8, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

### § 35-1328. Hearings.

(a) All hearings held pursuant to this chapter shall be governed by this section. In any hearing provided in this section the Commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury.

(b) Any person affected by an order, ruling, proceeding, or action of the Commissioner, or any person acting in his behalf and at his instance, may contest the validity of the same in any court of competent jurisdiction by appeal or through any other appropriate proceedings. In any said proceedings and appeals the Commissioner shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. The Commissioner shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by the Commissioner in any case, nor shall the Commissioner be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (Apr. 9, 1997, D.C. Law 11-227, § 9, 44 DCR 140.)

**Section references.** — This section is referred to in § 35-1326.

**Legislative history of Law 11-227.** — See note to § 35-1321.

**Weight of Commissioner's decision.** — Decision of the Superintendent of Insurance for District of Columbia (now Commissioner of

Insurance and Securities) as to whether a general insurance agent's license should be renewed must be given weight because of the Superintendent's (now Commissioner's) special position in the congressional regulatory plan. *Jordan v. Silverman*, 294 F.2d 916 (D.C. Cir. 1961).

### § 35-1329. Surrender of license; loss or destruction of license.

(a) The Commissioner shall promptly notify all appointing insurers, where applicable, and the licensee regarding any suspension, revocation, or termination of license by the Commissioner.

(b) Upon suspension, revocation, or termination of the license of a resident of the District, the Commissioner shall notify the Support and Services Office of the NAIC and the Insurance Commissioner of each state for whom he has executed a certificate as provided for in accordance with § 35-1324(5)(B)(ii).

(c) Upon suspension, revocation, or termination of a license, the licensee shall forthwith deliver it to the Commissioner by personal delivery or by mail.

(d) Any licensee who ceases to maintain his residency in the District, as defined in § 35-1324(5)(A), shall deliver his insurance licenses to the Commis-

sioner by personal delivery or by mail within 30 days after terminating said residency.

(e) The Commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this chapter upon an affidavit of the licensee prescribed by the Commissioner concerning the facts of such loss, theft, or destruction. (Apr. 9, 1997, D.C. Law 11-227, § 10, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

### § 35-1330. Termination reports.

(a) If an appointment is terminated, the insurer shall promptly give written notice of said termination and the effective date thereof to the Commissioner and to the licensee where reasonably possible. The Commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to give such notice to the licensee.

(b) All such notices of termination shall be filed in due course on forms prescribed by the Commissioner stating the cause and circumstances of such termination.

(c) In the event the termination is for any of the causes listed under § 35-1324, the insurer shall so notify the Commissioner. Any information, document, record, or statement provided pursuant to this section may be used by the Commissioner in any action taken pursuant to § 35-1324; however, such information shall be deemed privileged in any civil action between the reporting insurer and such terminated licensee. (Apr. 9, 1997, D.C. Law 11-227, § 11, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

### § 35-1331. Representatives of fraternal benefit societies.

Representatives of fraternal benefit societies who solicit and negotiate insurance contracts shall be deemed insurance agents and subject to the same licensing requirements as insurance agents; provided, that no insurance agent's license shall be required of:

(1) Any officer, employee, or secretary of any such society, or of any subordinate lodge or branch thereof, who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of contracts solicited or negotiated; or

(2) Any agent or representative of a society who devotes, or intends to devote, less than 50% of his time to the solicitation and procurement of insurance contracts for such society. Any person who in the preceding calendar year has solicited and procured life insurance in excess of \$50,000 face amount, or, in the case of any other kind of insurance which the society may write, on the persons of more than 25 individuals and who has received or will receive a commission or other compensation therefore, shall be presumed to be devoting



or intending to devote 50% of his time to the solicitation or procurement of insurance contracts for such society. (Apr. 9, 1997, D.C. Law 11-227, § 12, 44 DCR 140.)

**Section references.** — This section is referred to in § 35-1323.

**Legislative history of Law 11-227.** — See note to § 35-1321.

## § 35-1332. Countersignature and related laws.

Notwithstanding the provisions of this chapter, or any other laws of the District, there shall be no requirement that a licensed resident agent or broker must countersign, solicit, transact, take, accept, deliver, record, or process in any manner an application, policy, contract, or any other form of insurance on behalf of a nonresident agent or broker or an authorized insurer; or share in the payment of commissions, if any, related to such business. (Apr. 9, 1997, D.C. Law 11-227, § 13, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

## § 35-1333. Temporary licensing.

The Commissioner may issue a temporary license as an insurance agent or insurance broker for a period not to exceed 90 days without requiring an examination if the Commissioner deems that such temporary license is necessary for the servicing of an insurance business in the following cases:

(1) To the surviving spouse or next of kin, or to the administrator, executor, or employee thereof, of a licensed insurance agent who becomes deceased, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance agent or insurance broker who becomes disabled;

(2) To a member or employee of a partnership, or officer or employee of a corporation, licensed as an insurance agent, upon the death or disability of an individual designated in or registered as to the license;

(3) To the designee of a licensed insurance agent entering upon active service in the armed forces of the United States of America;

(4) To a trainee employed to collect and service a weekly or monthly premium debit; during the temporary license period, his or her sales activities must be confined to weekly and monthly life, health, and industrial fire plans; or

(5) In any other circumstance where the Commissioner deems that the public interest will best be served by the issuance of such license. (Apr. 9, 1997, D.C. Law 11-227, § 14, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

**§ 35-1334. Rules and regulations.**

The Commissioner of Insurance and Securities may adopt reasonable rules and regulations for the implementation and administration of the provisions of this chapter. (Apr. 9, 1997, D.C. Law 11-227, § 15, 44 DCR 140.)

**Legislative history of Law 11-227.** — See note to § 35-1321.

## CHAPTER 14. MARINE INSURANCE.

Sec.

- 35-1401. Definitions.
- 35-1402. Applicability of District insurance laws.
- 35-1403. Kinds of insurance authorized; reserves required; requirements for transacting business for stock companies and reinsurance corporations.
- 35-1404. Organization and licensing requirements for domestic mutual companies.
- 35-1405. Requirements for transacting business for foreign companies.
- 35-1406. [Repealed].
- 35-1407. Computation of unearned premiums.
- 35-1408. Taxation of companies — Tax on underwriting profit — Computation of profit.
- 35-1409. Same — Same — Computation and payment of tax.
- 35-1410. Same — Tax on average earnings on reserves for unpaid losses and unexpired premiums.
- 35-1411. Same — Tax on investment income from funds representing capital stock and surplus.
- 35-1412. Same — Computation and payment of taxes on earnings and investment income.
- 35-1413. Single annual license fee.
- 35-1414. Cessation of business.
- 35-1415. Failure to make reports or pay taxes or fees.

Sec.

- 35-1416. Exemption from District taxes or fees.
- 35-1417. Payment of federal income taxes.
- 35-1418. Investment of capital, assets and surplus.
- 35-1419. Acquisition, use and disposition of real estate by domestic companies.
- 35-1420. Mergers or consolidations.
- 35-1421. Establishment and maintenance of foreign agencies.
- 35-1422. Corporations engaged exclusively in writing insurance in foreign countries.
- 35-1423. Unauthorized transaction of insurance business.
- 35-1424. License of agent or broker; issuance; revocation.
- 35-1425. Licensees to maintain office and keep records; contents, inspection and confidentiality of records; violations.
- 35-1426. Licensees to furnish bond.
- 35-1427. Companies to keep classified records; violations.
- 35-1428. Violations of provisions.
- 35-1429. Additional personnel and expenses for Insurance Department.
- 35-1430. Severability.
- 35-1431. Right to amend or repeal chapter.
- 35-1432. Kinds of insurance prohibited.

## § 35-1401. Definitions.

Whenever used in this chapter:

(1) "Marine insurance" means insurance against any and all kinds of loss or damage to vessels, craft, cars, aircraft, automobiles, and other vehicles, whether operated on or under water, land, or in the air, in any place or situation, and whether complete or in process of or awaiting construction; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, including money loaned on bottomry or respondentia, valuable papers, and all other kinds of property and interests therein, including liabilities and liens of every description, in respect to any and all risks and perils while in course of navigation, transit, travel, or transportation on or under any seas or other waters, on land or in the air or while in preparation for or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including builders' risks, war risks and for loss of or damage to property or injury or death of any person, whether legal liability results therefrom or not, during, awaiting, or arising out of navigation, transit, travel, or transportation, or the construction or repair of vessels.



(2) "Marine insurance company" means any persons, companies, or associations authorized by this chapter to write marine insurance within the District.

(3) "Insurance company" or "company" means any insurer, incorporated or otherwise.

(4) "Domestic company" means an insurance company organized under the laws of the District of Columbia.

(5) "District" means the District of Columbia.

(6) "Commissioner" means the Commissioner of Insurance and Securities. (Mar. 4, 1922, 42 Stat. 401, ch. 93, title I, § 1; 1973 Ed., § 35-1101; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to rates, schedules, and classifications of employees' compensation insurance, see § 35-205.

As to taxation, see §§ 35-1408 to 35-1417.

As to definitions concerning fire, casualty, and marine insurance, see § 35-1503.

As to marine insurance exclusion from provisions governing rates on insurance companies generally, see § 47-2608.

**Section references.** — This section is referred to in § 35-1403.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) rewrote (6).

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reor-

ganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

## § 35-1402. Applicability of District insurance laws.

Unless the context of any section under this chapter expressly indicates otherwise, the laws of the District relating to the powers and duties of the Commissioner, making of examinations, filing of financial and other statements, legal process, organization and licensing of companies, certification and supervision of agents, deposit of assets, impairment and liquidation proceedings, and other requirements pertaining to insurance in general, shall, insofar as they are made applicable by the terms of such laws, or by the terms of this chapter, apply to all marine insurance companies transacting business within the District; provided, that, with respect to the filing of statements, the

Commissioner shall accept a photographic copy of a single original, or a certified copy from the insurance department of the state where the company is organized or has its principal office. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title I, § 2; 1973 Ed., § 35-1102; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to powers and duties of Insurance Department with respect to fire, casualty, and marine insurance, see § 35-1504.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

### **§ 35-1403. Kinds of insurance authorized; reserves required; requirements for transacting business for stock companies and reinsurance corporations.**

(a) A marine, fire-marine, or fire insurance company may be formed, admitted, or licensed to write any or all insurance and reinsurance comprised in any 1 or more of the following numbered paragraphs:

(1) On marine risks as described in § 35-1401 under the definition of “marine insurance”;

(2) On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or flywheels), breakage or leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; and against liability of the insured for such loss or damage; and on automobiles against loss or damage from collision or theft, and against liability of the owner or user for injury to person or property caused by his automobile;

(3) Against bodily injury or death by accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including quarantine and identification;

(4) Against liability of the insured for the death or disability of another;

(5) Against loss of or damage to property resulting from causes other than fire, marine and inland navigation hazards, and against liability of the insured for such loss or damage, and on motor vehicles against fire, marine and inland navigation hazards, and against personal injury and death, and liability of the insured therefor, from explosions of steam boilers and engines, pipes and machinery connected therewith, and breakage of flywheels or machinery, and to make and certify inspections thereof; and against loss of use and occupancy from any cause; against loss by burglary, theft, and forgery;

(6) Against loss or damage from failure of debtors to pay their obligations to the insured;

(7) Against loss from encumbrances on or defects in titles;

(8) Against loss or damage by theft, injury, sickness, or death of animals, and to furnish veterinary services; and

(9) Against any loss or liability arising from any other casualty or hazard not contrary to public policy, other than that appertaining to or connected with:

(A) Life insurance (including the granting of endowments and annuities); and

(B) Fidelity and surety bonding.

(b) An insurance company organized for the transaction of 1 or more of the kinds of insurance permitted under paragraphs (3) to (9), inclusive, of subsection (a) of this section, shall also, if complying with this chapter, be admitted or licensed to write any or all insurance and reinsurance comprised in any 1 or more of the other paragraphs of subsection (a) of this section; provided, that nothing in this section shall be construed as preventing any insurance company, formed, admitted, or licensed to transact insurance in the District on March 4, 1922, from continuing the writing of those kinds of insurance which it may have been authorized to write on March 4, 1922.

(c) Every company formed, admitted, or licensed to transact in the District any of the kinds of insurance permitted by the several numbered paragraphs of subsection (a) of this section shall maintain separate and distinct reserves for each kind of insurance so written, and if a stock company shall not transact the business of insurance in the District unless:

(1) It has a capital stock actually paid in, in cash or invested as provided by law, of at least \$100,000 for the insurance specified in any 1 paragraph of subsection (a) of this section nor unless it has a surplus of money or other lawful assets over its authorized capital and all other liabilities of at least \$50,000;

(2) With an additional \$50,000 of capital stock and \$25,000 of surplus for the insurance authorized by any other paragraph of subsection (a) of this section and which may be transacted by such company; and

(3) Every company writing more than 1 class of insurance, as authorized in the several paragraphs of subsection (a) of this section, shall keep a separate account of all receipts in respect to each class of insurance, as directed by the Commissioner, and the receipts in respect to each class of insurance shall be carried to and form a separate insurance fund with an appropriate name, which fund, exclusive of the capital stock and general surplus of the company, shall be as absolutely the security of the policyholders of that class as though it belonged to a company writing no other business than the insurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class, and shall not be applied, directly or indirectly, for any purposes other than those of the class of insurance to which the fund is applicable; provided, that nothing in this paragraph shall require the investments of any such fund to be kept separate from the investments of any other fund; provided further, that nothing in this paragraph shall be construed as preventing a company, at the end of each calendar year, from declaring dividends out of profits earned in any particular class of insurance, or from allocating such profits, either in part or in whole, to its general surplus; and provided further, that nothing in this section shall be applicable to companies operating in the District known as life, health, and accident companies under § 35-202.



(d) Corporations for the sole purpose of reinsuring risks insured by other companies may be organized, or admitted, within the District in the same manner as prescribed for other companies. Such reinsurance companies may transact business with any other insurer or reinsurer, and such reinsurance may include all classes of insurance that may be lawfully written; provided, that any reinsurance company, organized or admitted to reinsure 1 or more of the enumerated classes of insurance, shall be required to have an aggregate capital and surplus equal to the capital and surplus provided by this section for the direct writing of each class of insurance, and shall be required to hold reserves in the same amount and manner as required of other companies for each such class of insurance which, by the provisions of its charter, it is authorized to transact. Such reinsurance companies shall comply with this chapter, and with any other law of the District, regulating direct-writing companies, insofar as the same may be applicable. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title 2, § 3; 1973 Ed., § 35-1103; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to title insurance companies, see § 26-401 et seq.

As to provision that certain fire insurance companies may become perpetual, see § 29-237.

As to health and accident companies, see § 35-202.

As to prohibition against wagering policies, see § 35-1432.

As to life and title insurance excepted from operation of Fire, Casualty, and Marine Insurance Act, see § 35-1502.

As to types of insurance which can be written by fire, casualty, and marine insurance companies, see § 35-1514.

As to capital and surplus requirements for

fire, casualty, and marine insurance companies, see § 35-1516.

As to surplus requirements for operation under Lloyd's plan, see § 35-1524.

As to capital and surplus requirements of foreign and alien companies, see § 35-1526.

**Section references.** — This section is referred to in §§ 35-1404 and 35-1405.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in (c)(3).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1404. Organization and licensing requirements for domestic mutual companies.

No domestic mutual company shall be organized or licensed within the District unless it has applications from at least 200 persons for each class of insurance (as enumerated under the several paragraphs of subsection (a) of § 35-1403) it may be authorized to write aggregating not less than \$500,000, the maximum amount of insurance applied for in any application on any risk not exceeding one half of 1% of the aggregate amount, nor 3 times the average amount of insurance applied for in the several applications. No such mutual company shall be so licensed for any of the classes of insurance as allowed under the several paragraphs of subsection (a) of § 35-1403 unless it has received in cash, with respect to each such class of insurance written, at least 1 advanced periodical premium on each such application, aggregating at least \$10,000; but if the applications are for employers' liability or workmen's compensation insurance, the premiums on such applications shall aggregate at least \$25,000, and each employer shall be considered a separate risk; nor unless it has a surplus of \$10,000 in money or other lawful investments above

its liabilities, including the liability equal to the aggregate amount of premiums so advanced. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 4; 1973 Ed., § 35-1104.)

**Cross references.** — As to rates, schedules, and classifications of workmen's compensation insurance, see § 35-205.

As to licensing requirements for fire, casualty, and marine insurance, see § 35-1505.

As to capital and surplus requirements for fire, casualty, and marine insurance, see § 35-1516.

**Authority of Commissioner to regulate.**

— There is neither express nor implied authority in the Superintendent of Insurance of the

District (now Commissioner of Insurance and Securities) to amend, add to, or alter insurance law by regulations or to apply the drastic provisions of those rules solely to mutual companies. Without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co. v. Hazen*, 105 F.2d 53 (D.C. Cir. 1939).

**Cited in** *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 75 S. Ct. 368, 99 L. Ed. 337 (1955).

## § 35-1405. Requirements for transacting business for foreign companies.

An insurance company organized under laws other than the laws of the District and desiring to transact business in the District shall satisfy the Commissioner that it has, if a capital stock company, a paid-up capital and a surplus of assets, invested in accordance with the laws of the state under which it is organized, over its entire authorized capital and all other liabilities, at least equal to the capital and surplus prescribed under § 35-1403 for the writing of various kinds of insurance; and, if a company without capital stock or an interinsurance exchange, that it has a surplus of assets, invested according to the laws of the state under which it is organized, over all its liabilities, of \$100,000; or if a mutual company other than a life insurance company that it has a surplus over liabilities amounting to \$100,000, or in lieu thereof a surplus amounting to \$10,000 and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force; or if a company organized under a foreign government, province, or state, that it has a surplus of assets invested according to the laws of the District or of the state in the United States where it has its deposit, held in the United States in trust for the benefit and security of all its policyholders in the United States, over all its liabilities in the United States, of at least \$150,000, and, if writing more than 1 class of insurance as enumerated and allowed under § 35-1403, an additional \$75,000 for each such additional kind of insurance written; and such company so organized under the laws of a foreign government or state shall also either deposit with the Commissioner securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than 1 class of insurance) and of the classes in which insurance companies are permitted by this chapter to make investments, or with the official of a state of the United States, authorized by the law of such state to accept such deposit, securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than 1 class of insurance), of the classes in which life insurance companies of such states are permitted to make their investments, and such deposits shall be made for the benefit and security

of all the policyholders of such company in the United States, and the company shall file with the Commissioner the certificate of such official of any such deposit with such official of any such state. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 5; 1973 Ed., § 35-1105; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to admission of foreign and alien fire, casualty, and marine insurance companies, see §§ 35-1523 to 35-1527.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1406. Reinsurance of risks.

Repealed. Oct. 15, 1993, D.C. Law 10-36, § 6(b), as added May 16, 1995, D.C. Law 10-255, § 26(c), 41 DCR 5193.

**Legislative history of Law 10-36.** — Law 10-36, the "Law on Credit for Reinsurance Act of 1993," was introduced in Council and assigned Bill No. 10-128, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-69 and transmitted to both Houses of Congress for its review. D.C. Law 10-36 became effective on October 15, 1993.

**Legislative history of Law 10-255.** — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

## § 35-1407. Computation of unearned premiums.

With respect to marine insurance risks, the unearned premium shall be found by computing 50% of the amount of premiums received and receivable on unexpired risks on time policies running 1 year or less from date of policy, and 100% of the amount of premiums on all unexpired voyage and transit risks. As a basis for unearned premium reserves, unexpired voyage or transit risks shall be deemed to expire within 30 days on the average. Every insurance company shall so compute such unearned premium in its annual and other financial statements. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 4, § 7; 1973 Ed., § 35-1107.)

**Cross references.** — As to computation of reserves, see § 35-1530.

## § 35-1408. Taxation of companies — Tax on underwriting profit — Computation of profit.

(a) With the exception of license fees, real estate and personal property taxes, and a tax on investment income derived from funds representing reserves, capital stock and surplus as defined by this chapter, every insurance company organized, admitted, or licensed to transact business within the



District shall, with respect to marine insurance written by it within the District, be taxed only on that proportion of the total underwriting profit of the company from marine insurance written within the United States which the net premiums of the company from marine insurance written within the District bear to the total net marine premiums of the company written within the United States. The term "underwriting profit," as used herein, shall be arrived at by deducting from the premiums earned on marine insurance contracts written within the United States during the calendar year:

(1) The losses incurred; and

(2) Expenses incurred, including all taxes, in connection with such business.

(b) Premiums earned on marine insurance contracts written during the calendar year shall be arrived at as follows:

(1) Gross premiums on marine insurance contracts written during the calendar year, less return premiums and premiums paid for reinsurance;

(2) Add unearned premiums on outstanding marine business at the end of the preceding calendar year; and

(3) Deduct unearned premiums on outstanding marine business at the end of the current calendar year.

(c) Losses incurred, as used herein, shall mean gross losses incurred during the calendar year under marine insurance contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collected or collectible from any source applicable to aforesaid losses.

(d) Expenses incurred shall include:

(1) Specific expenses incurred, consisting of all agency commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically for the purpose of doing a marine insurance business; and

(2) General expenses incurred, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all federal government taxes, and all other expenses not chargeable specifically to a particular class of insurance which the net premiums received from marine insurance bear to the total net premiums received by the company from all classes of insurance written during the current calendar year. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 5, § 8; 1973 Ed., § 35-1108.)

**Cross references.** — As to exemption of "Syndicate B" from taxation, see § 35-1416.

As to taxation upon business written for unauthorized companies, see § 35-1544.

As to exemption from operation of general

statutes for taxation of insurance companies, see § 47-2608.

**Section references.** — This section is referred to in §§ 35-1409, 35-1410, 35-1411, 35-1414, 35-1416, and 35-1422.

## § 35-1409. Same — Same — Computation and payment of tax.

(a) Every company transacting marine insurance in the District shall set forth in its annual statement to the Commissioner, and in the form prescribed by him, all the items pertaining to its insurance business as enumerated and prescribed in § 35-1408. To determine the basis of the tax on underwriting

profit, every company which has been writing marine insurance for 5 years shall furnish the Commissioner a statement of all of the aforementioned items, in the form prescribed by him, for each of the preceding 5 calendar years. A company which has not been writing marine insurance for 5 years shall furnish to the Commissioner a statement of all of the aforementioned items for each of the calendar years during which it has written marine insurance.

(b) If the Commissioner finds the report of the company reporting correct, he shall, if the company has transacted marine insurance for 5 years: (1) Ascertain the total average annual underwriting profit, as hereinbefore defined, derived by the company from its marine insurance business written within the United States during the last preceding 5 calendar years; (2) ascertain the proportion which the average net annual premiums of the company from marine insurance written by it in the District during the last preceding 5 calendar years bear to the average total net marine premiums of the company during the same 5 years; (3) compute an amount of 5 per centum on this proportion of the aforementioned average annual underwriting profit of the company from marine insurance; and (4) charge the amount of tax thus computed to such company as a tax upon the marine insurance written by it in the District during the current calendar year. Thereafter the Commissioner shall each year compute the tax, according to the method described in this section, upon the average annual underwriting profit of such company from marine insurance during the preceding 5 years, including the current calendar year; namely, at the expiration of each current calendar year, the profit or loss on the marine insurance business of that year is to be added or deducted, and the profit or loss upon the marine insurance business of the 1st calendar year of the preceding 5-year period is to be dropped, so that the computation of underwriting profit for purposes of taxation under this chapter will always be on a 5-year average; provided, however, that a company which has not been writing marine insurance in the District for 5 years shall, until it has transacted such business in the District for that number of years, be taxed on the basis of the annual average underwriting profit on marine insurance written within the United States during the preceding 5 years as averaged for all companies reporting to the Commissioner for the current calendar year and which have been transacting marine insurance in the District for the past 5 years; provided further, that, if at any time none of the companies reporting to the Commissioner shall have written marine insurance in the District for 5 years, a company which has not been writing marine insurance in the District for 5 years shall be taxed on the basis of an annual average underwriting profit as averaged for all companies reporting to the Commissioner for the number of years during which they have written marine insurance in the District, subject, however, to an adjustment in the tax as soon as the Commissioner, in accordance with the provisions of this section, is enabled to compute the tax on the aforementioned 5-year basis; and provided further, that in the case of mutual companies the Commissioner shall not include in underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such companies on account of premiums previously paid by their policyholders.

(c) When the Commissioner has computed the tax on a company's underwriting profit, he shall forthwith mail to the last known address of the

principal office of such company a statement of the amount so charged against it, which amount the company shall pay to the Collector of Taxes within 30 days after receipt of such notice from the Commissioner, and no further tax, except the taxes on investment income from funds representing reserves, capital stock, and surplus as prescribed by §§ 35-1410 and 35-1411 and the license fee prescribed by § 35-1413, shall be imposed by the District upon such company, or the agents thereof, for the privilege of transacting the business of marine insurance in the District. (Mar. 4, 1922, 42 Stat. 406, ch. 93, title 5, § 9; 1973 Ed., § 35-1109; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to annual statements of fire, casualty, and marine insurance companies, see § 35-1511.

As to exemption from operation of general tax laws, see § 47-2608.

**Section references.** — This section is referred to in §§ 35-1410, 35-1411, 35-1412, 35-1413, 35-1414, 35-1416, and 35-1422.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished

the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

## § 35-1410. Same — Tax on average earnings on reserves for unpaid losses and unexpired premiums.

In addition to the tax on underwriting profit as prescribed under §§ 35-1408 and, 35-1409, every insurance company transacting business within the District shall, with respect to marine insurance written by it within the District, be taxed annually at the rate of 5% on its average earnings on reserves for unpaid losses and unexpired premiums. The reserve for unpaid losses and unexpired premiums shall be arrived at by adding the unpaid loss and unexpired premium reserves on marine insurance risks, written within the District, at the beginning and end of the calendar year, and striking an average. Should any company not carry its unpaid loss and unexpired



premium reserves separately for the District, then the tax provided under this section shall be applied to such proportion of the company's total unpaid loss and unexpired premium reserves as the net premiums of the company from marine insurance written within the District during the calendar year bear to the total net marine premiums of the company. Average earnings on reserves for unpaid losses and unexpired premiums shall be deemed, for the purpose of taxation under this section, to mean not more than 2% of these reserves. (Mar. 4, 1922, 42 Stat. 407, ch. 93, title 5, § 10; 1973 Ed., § 35-1110.)

**Cross references.** — As to exemption from operation of general tax laws, see § 47-2608.      referred to in §§ 35-1409, 35-1411, 35-1412, 35-1414, 35-1416, and 35-1422.

**Section references.** — This section is re-

### § 35-1411. Same — Tax on investment income from funds representing capital stock and surplus.

(a) In addition to the taxes, as prescribed under §§ 35-1408 to 35-1410, every company organized under the laws of the District and transacting marine insurance therein shall, with respect to marine insurance written in the District, pay a tax of 2% on its investment income from funds representing capital stock and surplus as shown by the company's annual statement. Such investment income shall, for purposes of taxation under this chapter, be arrived at as follows: Add the gross assets at the beginning and end of the calendar year and strike an average; add capital stock and surplus at the beginning and end of the year and strike an average; ascertain the proportion which the average capital stock and surplus bears to average gross assets; credit to investment income on capital stock and surplus such proportion of all income, except income taxed under § 35-1410, derived from interest, dividends, rents, and profits on sales or redemption of assets; charge against investment income on capital stock and surplus such proportion of all losses on sales or redemption of assets.

(b) Should a company subject to this tax be writing other classes of insurance, and the capital stock and surplus referred to herein relate to all the classes of insurance written without being specifically allocated to the several classes of insurance written, then such proportion of the investment income from funds representing capital stock and surplus, computed according to the method prescribed in the preceding subsection of this section, shall be applicable to marine insurance for purposes of taxation under this section as the net premiums from marine insurance during the calendar year bear to the net premiums of the company from all the classes of insurance written. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 11; 1973 Ed., § 35-1111.)

**Cross references.** — As to exemption from operation of general tax laws, see § 47-2608.      referred to in §§ 35-1409, 35-1412, 35-1414, 35-1416, and 35-1422.

**Section references.** — This section is re-

## § 35-1412. Same — Computation and payment of taxes on earnings and investment income.

Every company writing marine insurance in the District shall set forth in its annual statement to the Commissioner, and in the form prescribed by him, all the items necessary to compute the taxes as prescribed under §§ 35-1410 and 35-1411. If the Commissioner finds the report of such company correct he shall compute the taxes as prescribed and charge the same to such company. Notification to companies by the Commissioner of the amount of tax charged to them and the time and place of payment by the companies shall be the same as is required under § 35-1409, relating to taxation of underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 12; 1973 Ed., § 35-1112; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to annual statements of fire, casualty, and marine insurance companies, see § 35-1511.

As to exemption from operation of general tax laws, see § 47-2608.

**Section references.** — This section is referred to in §§ 35-1414, 35-1416, and 35-1422.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1413. Single annual license fee.

In lieu of all other license fees every company writing marine insurance in the District shall pay a single annual fee equal to \$100 if the assets of the company aggregate \$1,000,000 or under, to \$150 if the assets aggregate over \$1,000,000 and do not exceed \$5,000,000, and to \$200 if the assets exceed \$5,000,000. The manner and time of paying this single fee and its remittance to the Collector of Taxes shall be the same as prescribed under § 35-1409 for the payment of taxes on underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 13; 1973 Ed., § 35-1113.)

**Cross references.** — As to refund of fees when license refused, see § 47-1318.

As to exemption from operation of general tax laws, see § 47-2608.

**Section references.** — This section is re-

ferred to in §§ 35-1409, 35-1414, 35-1416, and 35-1422.

**Office of Collector of Taxes abolished.** — See note to § 35-1409.

## § 35-1414. Cessation of business.

If a company cease to do a marine insurance business in the District, it shall thereupon make report to the Commissioner of the items pertaining to its marine insurance business, as enumerated and described by §§ 35-1408 to 35-1413, to the date of its ceasing to do business and not theretofore reported, and forthwith pay to the Commissioner the taxes and annual license fee thereon, computed according to this chapter. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 14; 1973 Ed., § 35-1114; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to payment of taxes upon ceasing business, see § 35-1507.

As to exemption from operation of general tax laws, see § 47-2608.

**Section references.** — This section is referred to in § 35-1422.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1415. Failure to make reports or pay taxes or fees.

If a company refuses to make any report for taxation or license fee purposes, or to pay taxes or license fees imposed upon it as required by this chapter, it shall be liable to the United States for the amount thereof and a penalty of not more than \$200 per month for each month it has failed after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the District law relating to actions brought against insurance companies by policyholders thereof. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 15; 1973 Ed., § 35-1115.)

**Cross references.** — As to exemption from operation of general tax laws, see § 47-2608.

**Section references.** — This section is referred to in § 35-1422.

## § 35-1416. Exemption from District taxes or fees.

None of the taxes or fees prescribed under §§ 35-1408 to 35-1413 shall be imposed upon business written within the District by “Syndicate B,” a marine insurance syndicate created by agreement between the Federal Maritime Commission and the United States Shipping Board Emergency Fleet Corporation and a number of subscribing American marine insurance companies, under date of June 28, 1920, for the purpose of insuring all American steel steamships which the Federal Maritime Commission or United States Shipping Board Emergency Fleet Corporation may hereafter sell to others, to the full extent of the unpaid purchase price thereof, and also such other American steel steamships heretofore sold by said Commission or by said Corporation as are acceptable for insurance to the Syndicate B subscribers. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 16; 1973 Ed., § 35-1116.)

**Section references.** — This section is referred to in § 35-1422.

**United States Shipping Board abolished.** — By Executive Order No. 6166, § 12, dated June 10, 1933, the United States Shipping Board was abolished and its functions, including those over and in respect to the United States Shipping Board Merchant Fleet Corporation, were transferred to the Department of Commerce. By §§ 201 and 204 of the Act of June 29, 1936, 49 Stat. 1987, ch. 858, the United States Maritime Commission was cre-

ated and the functions of the former United States Shipping Board, including those vested in the Department of Commerce by Executive Order No. 6166, were transferred thereto. The functions of the United States Maritime Commission were transferred to the Federal Maritime Board by Part I of Reorganization Plan No. 21 of 1950, 64 Stat. 1273. The functions of the Federal Maritime Board were transferred to the Federal Maritime Commission by § 103 of Reorganization Plan No. 7 of 1961, 75 Stat. 840.

## § 35-1417. Payment of federal income taxes.

Nothing in this chapter shall be construed so as to relieve any corporation organized or doing business under the provisions of this chapter from the



payment of taxes on its income under the revenue laws of the United States. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 17; 1973 Ed., § 35-1117.)

**Section references.** — This section is referred to in § 35-1422.

**§ 35-1418. Investment of capital, assets and surplus.**

(a) The cash capital of every domestic corporation transacting marine insurance in the District, required to have a capital, to the extent of the minimum capital required by this chapter shall be invested and kept invested in:

(1) Stocks or bonds of the United States, or of any state or of the District, or of any county, township, school, or other district or municipality in the United States, or federal farm-loan bonds, not estimated above their par value or their current market value;

(2) Bonds or notes secured by mortgages or deeds of trust of improved unencumbered real estate, or perpetual leases thereof, in the United States, worth not less than 50% more than the amount loaned thereon. Where improvements on land constitute part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgagee in an amount not less than the difference between two thirds the value of the land and the amount of the loan;

(3) Mortgage bonds of railroad companies in the United States and on which default in payment of interest has not occurred within 5 years prior to the purchase by the company; or

(4) Loans upon the pledge of such securities.

(b) The cash capital of every insurance corporation not organized under the laws of the District and transacting marine insurance in the District to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the same classes of securities specified in subsection (a) of this section for domestic insurance corporations, except that like securities of the home state or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the Commissioner, may be invested in or loaned on the pledge of any of the securities specified in subsection (a) of this section; or in the stocks, bonds, or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States, or of any state thereof, or of the District; or in such real estate as it is authorized by this chapter to hold.

(c) The assets of every domestic mutual insurance corporation transacting marine insurance in the District to the extent of an amount equal to the minimum capital required of a like domestic stock corporation shall be invested and kept invested in the same class of securities specified for the investment of the minimum capital of like domestic stock insurance corporations. The residue of the assets of every domestic mutual insurance corporation, over and above said amount, may be invested in or loaned on the pledge

of the same classes of securities or property as specified in this section and § 35-1419 for the investment or loan of the residue of the capital and the surplus money and funds of like domestic stock insurance corporations.

(d) A company doing business in a foreign country may invest the funds required to meet its obligations in such country in conformity to the laws thereof in the same kinds of securities in such foreign country as such company is allowed by law to invest in the United States.

(e) Nothing in this chapter shall prohibit a company from accepting in good faith, in order to prevent losses and to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 6, § 18; 1973 Ed., § 35-1118; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to investments of insurance companies, see § 35-202.

As to investments of fire, casualty, and marine companies, see § 35-1521.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in (b).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1419. Acquisition, use and disposition of real estate by domestic companies.

(a) A domestic company may acquire, hold, and convey real estate only for the purpose and in the manner following:

(1) The building in which it has its principal office and the land on which it stands;

(2) Such as shall be requisite for branch office or other business facilities necessary for its convenient accommodation in the transaction of its business;

(3) Such as shall have been acquired for the accommodation of its business;

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due;

(5) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

(b) All such real estate specified in paragraphs (3), (4), (5), and (6) of subsection (a) of this section which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold by the company and disposed of within 5 years after it shall have acquired the title to the same, or within 5 years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procures the certificate of the Commissioner that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the Commissioner shall direct in such certificate. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 6, § 19; 1973 Ed., § 35-1119; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Cross references.** — As to acquisition of real estate by fire, casualty, and marine companies, see § 35-1519.

As to formal requisites for conveyance of real estate, see § 45-502.

**Section references.** — This section is referred to in § 35-1418.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1420. Mergers or consolidations.

(a) Any 2 or more corporations organized under the laws of the District, and transacting the business of marine insurance, may merge or consolidate into 1 corporation under the name of any title approved by the Commissioner, but no mutual corporation or company shall be merged with a stock corporation or company. The corporations may enter into and make an agreement for such merger or consolidation, prescribing its terms and conditions, the amount of its capital, which shall not be larger in amount than the aggregate amount of capital of the merged or consolidated corporations, and the number of shares into which it is to be divided. Such agreement must be assented to by a vote of the majority of the number of directors of each corporation prescribed in its charter and must be approved by the votes of stockholders owning at least two thirds of the stock of each corporation represented and voted upon in person or by proxy at a meeting, called separately for that purpose, upon a notice stating the time, place, and object of the meeting served at least 30 days previously upon each personally or mailed to him at his last known post-office address, and also published at least once a week for 4 weeks successively in some newspaper printed in the District. Every such agreement must have the approval of the Commissioner before the details of said agreement may be carried into effect as provided therein.

(b) The new corporation may require the return of the original certificates of stock held by each stockholder in each of the corporations to be merged or consolidated and issue in lieu thereof new certificates for such number of shares of its own stock as such stockholder may be entitled to receive. Upon such merger or consolidation all rights and property of the several companies shall become the property of the corporation composed of such companies, and the new corporation shall succeed to all the obligations and liabilities of the old corporations in the same manner as if they had been incurred or contracted by it. The stockholders of the old corporations shall continue subject to all the liabilities, claims, and demands existing against them at or before such merger or consolidation. No action or proceeding pending at the time of the consolidation, in which any or all of the old corporations may be a party, shall abate or discontinue by reason of the merger or consolidation, but the same may be prosecuted to final judgment in the same manner as if the merger or consolidation had not taken place, or the new corporation may be substituted in place of any corporation so merged or consolidated by order of the court in which the action or proceeding may be pending. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 7, § 20; 1973 Ed., § 35-1120; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)



**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in (a).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

### **§ 35-1421. Establishment and maintenance of foreign agencies.**

Any domestic company authorized to write insurance or reinsurance within the District may establish and maintain 1 or more agencies beyond the United States for the transaction of its lawful business upon such terms and conditions as it may prescribe and may omit from its annual report the transactions by any such agency, if beyond the North American continent, for 6 months previous to the time when the report is made, but such omitted transactions shall be included in the next annual report. If such company is required by the foreign nation within which it transacts business to make a deposit in the securities of its own government, or otherwise, the excess of such deposit over the local reserve liability, computed according to the terms of this chapter, shall be allowed as an asset in the company’s home statement. The company shall also be allowed to include in its admitted assets all agents’ balances in foreign countries which are collectible and which are not more than 180 days past due. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 21; 1973 Ed., § 35-1121.)

### **§ 35-1422. Corporations engaged exclusively in writing insurance in foreign countries.**

Corporations engaged exclusively in the writing of insurance in foreign countries may be organized within the District in the same manner and under the same conditions as prescribed by this chapter for companies writing risks within the United States. The capital stock of such insurance corporations may be owned by American corporations engaged in the same kind of insurance, and the holding companies shall be given credit for the stock thus owned as admitted assets when rendering their financial statements to the Commissioner. Any corporation organized under this section shall pay taxes and fees as provided under §§ 35-1408 to 35-1417 and shall comply with and receive the benefit of this chapter so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 22; 1973 Ed., § 35-1122; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the second sentence.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

### § 35-1423. Unauthorized transaction of insurance business.

Any insurance agent or broker, incorporated or unincorporated, or any other person, partnership, or corporation, who or which, with or without compensation, shall, in or from the District, act for or with, or aid, in any manner, either directly or indirectly, any other person, association, partnership, or corporation in soliciting, procuring, or transacting marine insurance with or from any corporation, partnership, association, Lloyd's, individual underwriters, or reinsurers not authorized by license of the Commissioner to transact the business of insurance therein, and whether the subject matter of the insurance or reinsurance is or may be within or without the District, except as provided in §§ 35-1424 to 35-1426, shall be guilty of a misdemeanor and shall forfeit to the District the sum of not less than \$100 nor more than \$1,000 for each offense; provided, that for the purposes of §§ 35-1423 to 35-1426 any office outside of the United States of an insurer organized under the laws of any foreign country, whether said insurer be licensed to do business in the United States or not, shall be deemed and held to be an insurer not authorized to transact the business of insurance in the District. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 23; 1973 Ed., § 35-1123; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to prohibition against representation of unauthorized companies except in certain cases, see §§ 35-1541, 35-1543, and 35-1544.

**Section references.** — This section is referred to in §§ 35-1425 and 35-1426.

**Effect of amendments.** — D.C. Law 11-

(Act 11-524) substituted "Commissioner" for "Superintendent."

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 1401.

### § 35-1424. License of agent or broker; issuance; revocation.

The Commissioner, in consideration of the yearly payment of \$100, shall issue to any person or corporation who is trustworthy and is competent to transact a marine insurance business in such manner as to safeguard the interests of the insured and who maintains in this District a regular office for the transaction of an insurance brokerage business a license, revocable for cause by the Commissioner, permitting the party named in such license to act within the District as agent for the assured or broker to solicit or negotiate or place contracts of marine insurance with corporations, partnerships, associations, Lloyd's, individual underwriters, and interinsurers, which are not authorized to transact the business of insurance in this District, and shall renew the same annually, unless revoked for cause; provided, that with respect to insurers organized under the laws of any foreign country and duly licensed to transact the business of insurance in any state or territory of the United States and with respect to insurers organized under the laws of any state or territory of the United States, said license shall not issue unless the Commissioner shall be satisfied that said insurers show within the United States the same standards of solvency as would be required if said insurers were licensed

at the time of issue of said license to transact the business of marine insurance in the District. Said license shall provide and the licensee thereunder shall agree that it may be revoked by the Commissioner in his discretion in the event that said licensee does not comply with the terms and conditions of said license and of this chapter; provided, that if a branch, associate, agent, correspondent, or head office of any broker so licensed by the Commissioner, or such broker, shall, outside of this District, do or perform any of the acts or things forbidden to an unlicensed broker in this District the Commissioner may, in his discretion, cancel and revoke the license of such licensee; provided, however, that nothing herein contained shall authorize any person or corporation so licensed to act as insurer or guarantee the performance of any agreement, instrument, or policy of insurance or reinsurance as aforesaid or countersign or issue in the District any agreement, policy, or other instrument of such insurance unless such person or corporation so licensed shall have complied with the provisions of this chapter. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 24; 1973 Ed., § 35-1124; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Cross references.** — As to insurance agents other than life, see § 35-1301.

As to refund of fees when license refused, see § 47-1318.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in §§ 35-1423, 35-1425, and 35-1426.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1425. Licensees to maintain office and keep records; contents, inspection and confidentiality of records; violations.

Any person or corporation holding such license from the Commissioner who shall do or perform any or all of the aforesaid acts in connection with marine insurance with any corporation, person, partnership, association, Lloyd’s, individual underwriters, or interinsurers, which are not authorized by license of the Commissioner to transact such business in the District, shall: (1) maintain in good faith an office in the District; (2) keep in said office a complete book of record of the marine insurance transacted by, through, or with his or its assistance with unauthorized insurers, showing: (A) a brief description or identification of the subject matter and kind of the insurance; (B) the voyage insured, or, if for time, the date of such insurance going into effect and the date of its termination; (C) the name of the beneficial insured; (D) the amount insured with unauthorized insurers; (E) the rate of premium; and (F) the gross premium payable therefor. Such book of record shall also contain statements in the same details of all such insurances canceled or on which premiums have been increased or reduced (including laying-up returns) and the amounts of additional or of return premiums thereon; and (3) keep in said office such additional record of the insurance, including the names of the corporations,



partnerships, associations, persons, Lloyd's, underwriters, or interinsurers and the amount insured by each. The books of record and all supplementing records shall be open at all times to the inspection of and examination by the Commissioner of Insurance and Securities or anyone appointed by him for said purpose. The data as herein outlined shall be furnished to the Commissioner within 1 month following his request therefor and upon the form furnished by him. Such classified records of any licensee reporting shall be regarded by the Commissioner as intended solely for the information of the District and federal governments and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to any person or corporation not legally authorized to receive the same shall be guilty of a misdemeanor and subject, upon conviction, to a fine of \$2,000 or imprisonment for 1 year, or to both such fine and imprisonment. Any licensee under §§ 35-1423 to 35-1426 failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month he has failed. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 25; 1973 Ed., § 35-1125; Oct. 5, 1985, D.C. Law 6-42, § 462, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(u), 38 DCR 314; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1423 and 35-1426.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance" in the sentence following clause (3); and substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 6-42.** — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-237.** — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1426. Licensees to furnish bond.

Each person or corporation to whom such a license as broker shall be issued shall, before transacting business thereunder, execute and deliver to the Commissioner a bond in the penal sum of not less than \$5,000, with such surety or sureties as the Commissioner shall require and approve, conditioned that the said broker will faithfully comply with all the requirements of §§ 35-1423 to 35-1426. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 9, § 26; 1973 Ed., § 35-1126; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-1423 and 35-1425.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1427. Companies to keep classified records; violations.

Every insurance company organized or admitted to write marine insurance within the District shall keep a classified record of all its marine insurance transactions in the United States, setting forth for each calendar year the volume of risks and the premiums involved with respect to: (1) hull and time freight insurance; (2) cargo and voyage freight insurance and other voyage interests; (3) builders’ risk insurance; (4) reinsurance ceded to American companies; (5) reinsurance ceded to American branch offices of alien admitted companies; (6) reinsurance ceded to any foreign office of alien admitted companies and reinsurance ceded to nonadmitted alien insurers; (7) reinsurance received from American companies; and (8) reinsurance received from any foreign office of admitted alien companies and reinsurance received from alien nonadmitted insurers. The data as herein outlined shall be furnished to the Commissioner within 2 months following his request therefor and upon the form furnished by him. Such classified records of any individual company reporting shall be regarded by the Commissioner as intended solely for the information of the District and federal governments, and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to a competitor shall be guilty of a misdemeanor and subject upon conviction to a fine of \$2,000, or imprisonment for 1 year, or to both such fine and imprisonment. Any company or admitted branch office failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month it has failed. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 10, § 27; 1973 Ed., § 35-1127; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1428. Violations of provisions.

Any person, corporation, association, or partnership who violates any of the provisions of this chapter, or fails to comply with any duty imposed upon him or it by any provision of said sections, for which violation or failure no penalty is elsewhere provided by said sections or by the laws of the District, shall upon conviction thereof be fined not exceeding \$500. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of

this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 28; 1973 Ed., § 35-1128; Mar. 8, 1991, D.C. Law 8-237, § 2(u), 38 DCR 314.)

**Legislative history of Law 8-237.** — See note to § 35-1425.

## § 35-1429. Additional personnel and expenses for Insurance Department.

For the purpose of carrying out the provisions of this chapter the Commissioner of Insurance and Securities is authorized to appoint, in addition to the present force, an examiner and a clerk-stenographer and to increase the contingent expenses of the Insurance Department in the sum of \$800. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 12, § 30; 1973 Ed., § 35-1130; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(q), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance.”

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1401.

**Department of Insurance abolished.** — See note to § 35-1401.

## § 35-1430. Severability.

This chapter shall supersede the provisions of any other law of the District in conflict therewith. Should any section or provision of this chapter be held unconstitutional or invalid, the constitutionality or validity of the chapter as a whole or of any part thereof, other than the part so held unconstitutional or invalid, shall not be affected. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 31; 1973 Ed., § 35-1131.)

## § 35-1431. Right to amend or repeal chapter.

The right to alter, amend, or repeal this chapter is hereby reserved. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 32; 1973 Ed., § 35-1132.)

## § 35-1432. Kinds of insurance prohibited.

No insurance shall be made by any person or persons, bodies politic or corporate, on any ship or ships, or on any goods, merchandise, or effects laden or to be laden on board of any ship or ships, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering or without benefit of salvage to the insurer; and every such insurance shall be



null and void to all intents and purposes. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 656; 1973 Ed., § 35-1133.)

**Section references.** — This section is referred to in § 35-1302.

## CHAPTER 15. FIRE, CASUALTY, AND MARINE INSURANCE.

*Subchapter I. General Provisions.*

Sec.

- 35-1501. Short title.
- 35-1502. Applicability of chapter.
- 35-1503. Definitions.
- 35-1504. Records of Commissioner; rules and regulations.
- 35-1505. Certificate of authority to do business — Issuance or renewal.
- 35-1506. Same — Revocation or suspension.
- 35-1507. Cessation of business.
- 35-1508 to 35-1510. [Repealed].
- 35-1511. [Repealed].
- 35-1512. Making or publishing material false statements.
- 35-1513. [Repealed].
- 35-1514. Kinds of insurance authorized.
- 35-1515. Limitations on exposure to risks or hazards.
- 35-1516. Minimum capital and surplus requirements.
- 35-1517. Applicability of provisions to existing companies.
- 35-1518. Formation of domestic companies.
- 35-1519. Acquisition, use and disposition of real estate by domestic companies.
- 35-1520. Power of domestic mutual companies to borrow or assume liability.
- 35-1521. Investment of funds by domestic companies.
- 35-1522. Exclusive agency contracts of domestic companies.
- 35-1523. Authority to transact business — Foreign or alien companies.
- 35-1524. Same — Lloyd's organizations.
- 35-1525. Procurement of certificate of authority by foreign or alien companies — Application forms.
- 35-1526. Same — Delivery of certain documents to Commissioner; required showings; authorized examinations.
- 35-1527. [Repealed].

Sec.

- 35-1528. Names or designations used by mutual companies and reciprocal or interinsurance exchanges.
- 35-1529. Premiums of mutual companies.
- 35-1530. Company reserves.
- 35-1531. Filing and approval of policy forms.
- 35-1532. Required provisions in health and accident policies.
- 35-1533. Discriminations prohibited.
- 35-1534. Powers of agents, salaried employees and brokers.
- 35-1535. Compensation of unlicensed persons prohibited.
- 35-1536 to 35-1541. [Repealed].
- 35-1542. Exceptions to licensing provisions.
- 35-1543. Persons not to act for unauthorized companies.
- 35-1544. License to procure policies from unauthorized companies.
- 35-1545. License fees.
- 35-1546. Violations of provisions.
- 35-1547 to 35-1549. [Repealed].

*Subchapter II. Insurance Premium Finance Companies.*

- 35-1551. Applicability of provisions.
- 35-1552. Definitions.
- 35-1553. Licenses — Persons required to obtain; fees; other requirements.
- 35-1554. Same — Issuance or renewal.
- 35-1555. Same — Revocation, suspension or refusal to renew; penalty in lieu of revocation or suspension; right of applicant or licensee to administrative or judicial hearing.
- 35-1556. Records.
- 35-1557. Rules and regulations.
- 35-1558. Form and contents of agreements.
- 35-1559. Service charges.
- 35-1560. Delinquency charges.
- 35-1561. Cancellation of insurance contracts.
- 35-1562. Validity of agreements as secured transactions.

*Subchapter I. General Provisions.*

## § 35-1501. Short title.

This subchapter shall be known as the "Fire and Casualty Act." (Oct. 9, 1940, 54 Stat. 1063, ch. 792, ch. I, § 1; 1973 Ed., § 35-1301.)

**Cross references.** — As to insurance companies, see Chapters 1 and 2 of this title.

As to marine insurance companies, see Chapter 14 of this title.

**Editor's notes.** — Because of the codifica-

tion of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter."

**Repeal of earlier statute.** — This chapter

repealed an earlier statute exempting nonprofit relief associations composed of government employees from licensing and regulation. *National*

*Fed'n of Post Office Clerks v. District of Columbia*, App. D.C., 173 A.2d 483 (1961).

## § 35-1502. Applicability of chapter.

All fire, marine, and casualty insurance companies now or hereafter incorporated or formed in the District or authorized to do business in the District, all brokers and all agents and other representatives of such companies shall, to the extent hereinafter provided, be subject to this subchapter; provided, that this subchapter shall not affect the business of life and title insurance, and shall not affect the right or authority of any solvent company to make contracts of fidelity or surety, and shall not affect a plan under which any person provides pension benefits to his employees. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, ch. I, § 2; 1973 Ed., § 35-1302.)

**Cross references.** — As to effect of chapter on existing companies, see § 35-1517.

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter" twice.

**Cited in** *National Fed'n of Post Office Clerks v. District of Columbia*, App. D.C., 173 A.2d 483 (1961).

## § 35-1503. Definitions.

In this subchapter, unless the context otherwise requires:

- (1) "District" means District of Columbia.
- (2) "Mayor" means the Mayor of the District of Columbia.
- (3) "Commissioner" means the Commissioner of Insurance and Securities, or the officer or officers, agency or agencies succeeding to his functions under Reorganization Plan No. 5 of 1952.
- (4) "Department" means the Department of Insurance of the District of Columbia.
- (5) "Company" means an insurance, surety, or indemnity company, and shall be deemed to include a corporation, company, partnership, association, individual, or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance, surety, or indemnity business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.
- (6) "Authorized company" means a company which has authority from the Commissioner to do business in the District as provided under § 35-1505.
- (7) "Unauthorized company" means a company which does not have authority from the Commissioner to do business in the District as provided under § 35-1505.
- (8) "Domestic company" means a company incorporated or organized under the laws of the District.
- (9) "Foreign company" means a company incorporated or organized under the laws of any state of the United States.
- (10) "Alien company" means a company incorporated or organized under the laws of any country other than the United States.
- (11) "Reciprocal" includes interinsurance exchange.



(12) "Person" includes individuals, corporations, associations, exchanges, and partnerships.

(13) Personal pronouns include all genders; the singular includes the plural and the plural includes the singular.

(14) "Policy" means an insurance policy or contract, including contracts of fidelity and surety, and includes any contract wherein 1 party called the "company," for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to any other party, upon the happening of the hazard or peril insured against whereby the party insured suffers loss or injury or is subjected to legal liability.

(15) "Officer," when used to refer to officer of the company, includes an attorney-in-fact.

(16) "Policy-writing agent" means any person who is not a salaried employee of a company, and whose residence or principal place of business is located in the District, and who is authorized in writing by any company authorized to transact business in the District to countersign policies and to solicit, negotiate, or effect contracts of insurance, surety, or indemnity for such company in the District.

(17) "Soliciting agent" means any person who is not a salaried employee of a company and whose residence or principal place of business is located in the District, and who is authorized by a company having authority to transact business in the District, or by a policy-writing agent, to solicit in the District contracts of insurance, surety, or indemnity in behalf of such company or agent.

(18) "Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance, surety, or indemnity.

(19) "Salaried company employee" means any person regularly employed by an authorized company, and who is paid a regular wage or salary to perform certain duties and functions authorized by such company. For the purposes of this subchapter the term "salaried company employee" shall not include employees engaged solely in office duties or in the inspection, rating, or classifying of risks or in the supervision of agents, or any employee not engaged in the solicitation or writing of policies, or officers of companies or associations engaged in the performance of their usual and customary executive duties.

(20) "Surplus" means the excess of admitted assets over liabilities and capital in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock.

(21) "Liabilities" means all debts due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by this subchapter.

(22) "Admitted assets" includes the investments authorized or permitted pursuant to the National Association of Insurance Commissioners Accounting Practices Manual. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, ch. I, § 3; June 30, 1953, 67 Stat. 120, ch. 168; 1973 Ed., § 35-1303; Sept. 8, 1995, D.C. Law 11-36, § 9(a), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 9(a), 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(1), 44 DCR 1730.)

**Cross references.** — As to definitions relating to “marine insurance,” see § 35-1401.

As to definition of “encumbrances on real estate,” see § 35-1521.

As to additional definition of “company,” see § 35-1543.

**Section references.** — This section is referred to in § 35-3701.

**Effect of amendments.** — D.C. Law 11-90 rewrote (22).

D.C. Law 11- (Act 11-524) rewrote (3); and substituted “Commissioner” for “Superintendent” in (6) and (7).

**Temporary amendment of section.** — D.C. Law 11-36 rewrote (22).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 10(a) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 9(a) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 11-36.** — Law 11-36, the “Insurance Omnibus Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the “Insurance Omnibus Insurance Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both

Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Editor’s notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter” in the introductory language and in paragraphs (19) and (21).

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of

Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

**Application of statutes regulating insurance.** — Statutes regulating business of insurance

were not intended for application to all organizations having some element or risk assumption or distribution in their operations. *Metropolitan Police Retiring Ass'n v. Tobriner*, 306 F.2d 775 (D.C. Cir. 1962).

**Cited in** *National Fed'n of Post Office Clerks v. District of Columbia*, App. D.C., 173 A.2d 483 (1961).

## § 35-1504. Records of Commissioner; rules and regulations.

(a) The office of the Commissioner shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as the Commissioner for good reason may decide otherwise, or except as it may be provided otherwise herein.

(b) The Council of the District of Columbia shall have authority to make, and the Commissioner shall have the authority to enforce, such reasonable rules and regulations as may be necessary in making effective the provisions of this subchapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this subchapter. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, ch. II, § 1; 1973 Ed., § 35-1304; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to power and duties of Commissioner with respect to marine insurance, see § 35-1402.

As to form of application of foreign and alien companies to do business in District, see § 35-1525.

As to inequitable policy forms, see § 35-1531.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter" in two places in subsection (b).

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(277) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1505. Certificate of authority to do business — Issuance or renewal.

It shall be the duty of the Commissioner to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The Commissioner may, however, satisfy himself by such investigation as he may deem proper or



necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the Commissioner authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the 30th day of April next succeeding the date of its issuance. No company shall transact any business in or from the District until it shall have received a certificate of authority as authorized by this section, and no company shall transact any business not specified in such certificate of authority. No domestic mutual company shall transact any business in the District until it has bona fide applications for insurance covering not less than 200 separate risks in not less than 20 policies to be issued to not less than 20 members, and has received the cash premium therefor, and has a surplus of not less than the amount provided under §§ 35-1515 and 35-1516. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, ch. II, § 2; 1973 Ed., § 35-1305; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to issuance of certificate, see § 35-1518.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in §§ 35-1503, 35-1518, 35-1523, 35-3001, and 35-3201.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

**Single insurer may do both life and ca-**

**sualty business.** — The Life Insurance Act of District of Columbia (chapters 3 to 8 of this title) and this chapter do not prohibit the issuance of certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Travelers Ins. Co. v. Jordan*, 287 F.2d 347 (D.C. Cir. 1961).

**Single insurer must meet all license requirements.** — An insurer who seeks licenses under both the Life Insurance Act and the Fire and Casualty Act bears the responsibility of satisfying the more stringent requirement regardless of which statute prescribes it, and if 2 certificates are issued, each must stand on its own merits. *Travelers Ins. Co. v. Jordan*, 287 F.2d 347 (D.C. Cir. 1961).

## § 35-1506. Same — Revocation or suspension.

(a) The Commissioner shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of this subchapter, or which:

- (1) Is impaired in capital or surplus;
- (2) Is insolvent;
- (3) Is determined, pursuant to Chapter 35 of this title, to be in such condition that further transaction of business by the company will be hazardous to its policyholders, creditors, or the general public;
- (4) Has refused or neglected to pay a valid final judgment against such company within 30 days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;

(5) Has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;

(6) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Commissioner, his deputies, or duly appointed examiners;

(7) Has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;

(8) Fails to file with the Commissioner a copy of an amendment to its charter or articles of association within 30 days after the effective date of such amendment;

(9) Has had its corporate existence dissolved or its certificate of authority revoked in the state in which it was organized;

(10) Has had all its risks reinsured in their entirety in another company, without prior approval of the Commissioner; or

(11) Has made, issued, circulated, or caused to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting either its status or the terms of any policy issued or to be issued by it, or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or has used any name or title of any policy or class of policies misrepresenting the true nature thereof.

(b) The Commissioner shall not revoke or suspend the certificate of authority of any company until he has given the company not less than 30 days notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing; provided, that if the Commissioner shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required; provided further, that in lieu of revoking or suspending the certificate of authority of any company for causes enumerated in this section after hearing as herein provided, the Commissioner may subject such company to a penalty of not more than \$10,000 for any violation, or not more than \$25,000 for intentional violations, when in his judgment he finds that public interest would be best served by the continued operation of the company. The amount of any such penalty shall be paid by the company through the office of the Commissioner to the Collector of Taxes, District of Columbia. At any hearing provided by this section, the Commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely after having been administered such an oath shall be subject to the penalties of perjury. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, ch. II, § 3; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 1; Feb. 22, 1958, 72 Stat. 21, Pub. L. 85-334, § 4; 1973 Ed., § 35-1306; Mar. 14, 1985, D.C. Law 5-160, § 2(a), 32 DCR 39; Oct. 5, 1985, D.C. Law 6-42, § 447(a), 32 DCR 4450; Mar. 8, 1991, D.C. Law

8-237, § 2(r)(1), 38 DCR 314; Oct. 21, 1993, D.C. Law 10-43, § 4(b), as added Mar. 17, 1994, D.C. Law 10-76, § 7(b), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 7(b), 41 DCR 1005; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to administrative procedure, see § 1-1501 et seq.

As to general penalties for violation of insurance laws, see § 35-1546.

**Section references.** — This section is referred to in §§ 35-228, 35-1011, 35-1709, 35-3205, and 35-3603.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the introductory language of (a), in (a)(6), (8) and (10) and throughout (b).

**Legislative history of Law 5-160.** — Law 5-160, the “Life Insurance Amendments Reform Act of 1984,” was introduced in Council and assigned Bill No. 5-471, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-225 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-42.** — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-237.** — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-76.** — Law 10-76, the “Insurance Omnibus Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law to become effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the “Insurance Omnibus Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor’s notes.** — Because of the codification of Pub. L. 89-402 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter” in the introductory language of subsection (a) and in the fifth sentence of subsection (b).

**Department of Insurance abolished.** — See note to § 35-1503.

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121, was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the



Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the

Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

## § 35-1507. Cessation of business.

If a company shall cease to do business in the District, it shall thereupon make report to the Commissioner of the taxable premiums collected which have not been reported prior to the date of the cessation of business, and shall forthwith pay to the Collector of Taxes of the District, through the Commissioner, a tax thereon computed according to law. If a company fails or refuses to make such a report or to pay the tax imposed upon it as required by law, it shall be liable to the District for the amount of such taxes, plus a penalty of 8 per centum per month for each month or part thereof during which such taxes remain unpaid. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, ch. II, § 4; 1973 Ed., § 35-1307; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to taxation of insurance companies, see §§ 35-1408 to 35-1417 and 47-2606 et seq.

As to payment of taxes upon ceasing business, see § 35-1414.

As to exemption of marine insurance from operation of general tax laws, see § 47-2608.

**Effect of amendments.** — D.C. Law 11-

(Act 11-524) substituted "Commissioner" for "Superintendent" twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

**Office of Collector of Taxes abolished.** — See note to § 35-1506.

## §§ 35-1508 to 35-1510. Takeover of companies by Superintendent; liquidation thereafter; "insolvency" defined; "impairment of capital or surplus" defined.

Repealed. Oct. 15, 1993, D.C. Law 10-35, § 59(b), 40 DCR 5773.

**Legislative history of Law 10-35.** — Law 10-35, "Insurers Rehabilitation and Liquidation Act of 1993," was introduced in Council and assigned Bill No. 10-123, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-68 and transmitted to both Houses of Congress for its

review. D.C. Law 10-35 became effective on October 15, 1993.

**Legislative history of Law 10-76.** — See note to § 35-1506.

**Legislative history of Law 10-103.** — See note to § 35-1506.

**Editor's notes.** — D.C. Law 10-76 and D.C. Law 10-103 purported to amend former § 35-1508 by rewriting (a)(1)(D).

## § 35-1511. Required annual financial statements.

Repealed. Oct. 21, 1993, D.C. Law 10-42, § 7(c), 40 DCR 6020.

**Legislative history of Law 10-42.** — Law 10-42, the “Required Annual Financial Statements and Participation in the NAIC Insurance Regulatory Information System Act of 1993,” was introduced in Council and assigned Bill No. 10-129, which was referred to the Committee on Consumer and Regulatory Affairs. The

Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-77 and transmitted to both Houses of Congress for its review. D.C. Law 10-42 became effective on October 21, 1993.

## § 35-1512. Making or publishing material false statements.

Any director, officer, agent, or employee of any company who subscribes to, makes or concurs in making or publishing any annual or other statement required by law, knowing the same to contain any material statement which is false, shall be fined not more than \$5,000 or imprisoned for not more than 5 years, or both. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, ch. II, § 9; 1973 Ed., § 35-1312.)

**Cross references.** — As to penalties for violation of chapter, see § 35-1546.

**Cited in** Imperial Ins., Inc. v. Employers’

Liab. Assurance Corp., 442 F.2d 1197 (D.C. Cir. 1970).

## § 35-1513. Examinations by Superintendent; violations; acceptance of reports in lieu of examinations.

Repealed. Oct. 21, 1993, D.C. Law 10-49, § 9(c), 40 DCR 6110.

**Legislative history of Law 10-49.** — Law 10-49, the “Law on Examinations Act of 1993,” was introduced in Council and assigned Bill No. 10-131, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings

on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, and it was assigned Act No. 10-94 and transmitted to both Houses of Congress for its review. D.C. Law 10-49 became effective on October 21, 1993.

## § 35-1514. Kinds of insurance authorized.

Any company authorized to do business in the District may, when empowered by its charter, make all or any 1 or more of the kinds of insurance and reinsurance comprised in either or both of the following classes, subject to and in accordance with the provisions of this subchapter:

(1) *Fire and marine.* — On houses, buildings, and all other kinds of property against loss, damage, or damages by fire, lightning, or storm; to insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water pipes; and to make all kinds of insurance against loss of or damage to goods, merchandise, or other property caused by fire, risks of transportation, or navigation, the action of the elements or adverse manifestations of nature, as well as all and every risk or peril to which the subject of insurance may be exposed, against which it is not contrary to public policy to insure, including every insurable interest therein or in the use thereof, or profit or income therefrom, or legal liability therefor, but not to include injury to the person nor loss caused by breach of trust; and

(2) *Casualty*. (A) Upon the health of persons, or against injury, disablement, or death of persons resulting from traveling or general accidents by land or water, and against liability of the assured for injuries to employees or other persons;

(B) Against liability of the assured for loss or destruction of or damage to property;

(C) Upon the lives of domestic animals;

(D) Against loss of or damage to glass and its appurtenances;

(E) Against loss of or damage to any property resulting from the explosion of or injury to any boiler, heater, unfired pressure vessel, pipes, or containers connected therewith, any engine, turbine, compressor, pump, or wheel or any apparatus generating, transmitting or using electricity, or any other machine or apparatus connected with or operated by any of the previously named boilers, vessels, or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise;

(F) Against loss by burglary or theft, or both, and against loss of or damage to moneys and securities;

(G) To guarantee and indemnify merchants, traders, and those engaged in business and giving credit, from loss and damage by reason of giving and extending credit to their customers and those dealing with them;

(H) Against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers or water pipes; and

(I) To insure against any other casualty risk which may lawfully be the subject of insurance, and which it is not contrary to public policy to insure; provided, that this section shall not be construed as having any effect whatever upon the right or authority of any solvent company to make contracts of fidelity or surety. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, ch. II, § 11; 1973 Ed., § 35-1314.)

**Cross references.** — As to insurance under Employees' Compensation Act, see § 35-205.

As to kinds of insurance which may be written by marine insurance companies, see § 35-1403.

As to prohibition against wagering policies, see § 35-1432.

**Section references.** — This section is referred to in § 35-1503.

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language.

## § 35-1515. Limitations on exposure to risks or hazards.

No company other than a mutual or reciprocal company doing business in the District shall expose itself to any loss on any 1 risk or hazard in the District to an amount exceeding 10% of the sum of its capital stock and surplus. No mutual or reciprocal company shall expose itself to any loss on any 1 risk or hazard in the District to an amount exceeding 10% of its surplus. No portion of any such risk or hazard which shall have been reinsured in a company authorized to do business in the District shall be included in determining



limitation of risk; provided, that the provisions of this section shall not apply to the insurance of workmen's compensation, employers' liability, marine, or inland marine risks. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, ch. II, § 12; 1973 Ed., § 35-1315; Mar. 17, 1994, D.C. Law 10-76, § 3, 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 3, 41 DCR 1005.)

**Cross references.** — As to reinsurance of risks, see § 35-1406.

As to limitation of risk for companies operating on Lloyd's plan, see § 35-1524.

**Section references.** — This section is referred to in § 35-1505.

**Legislative history of Law 10-76.** — See note to § 35-1506.

**Legislative history of Law 10-103.** — See note to § 35-1506.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1516. Minimum capital and surplus requirements.

Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$300,000, and a surplus of not less than \$300,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than \$300,000 and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than \$400,000. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, ch. II, § 13; Apr. 16, 1966, 80 Stat. 121, Pub. L. 89-399, § 1(b); 1973 Ed., § 35-1316; Aug. 14, 1973, 87 Stat. 304, Pub. L. 93-89, title IV, § 401.)

**Cross references.** — As to capital and surplus requirements for marine insurance companies, see §§ 35-1403 and 35-1404.

As to surplus required for operation under Lloyd's plan, see § 35-1524.

As to capital and surplus requirements for foreign and alien companies, see § 35-1526.

**Section references.** — This section is referred to in §§ 26-401, 35-1505, 35-3208, and 35-4716.

## § 35-1517. Applicability of provisions to existing companies.

No company shall be exempt from the provisions of this chapter by reason of its having been incorporated in the District or elsewhere prior to the effective date of this chapter, except that, in the case of companies authorized in the District on October 9, 1940, and continuously thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization, by the laws of the District heretofore applicable shall not be increased by this chapter, and provided also that in the case of such continuously authorized companies the provisions of § 35-1528 relating to the names of companies, and the provisions of § 35-1529 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, ch. II, § 14; 1973 Ed., § 35-1317; Aug. 14, 1973, 87 Stat. 304, Pub. L. 93-89, title IV, § 401; Feb. 23, 1980, D.C. Law 3-52, § 4, 27 DCR 26.)

**Section references.** — This section is referred to in §§ 35-1528 and 35-1529.

**Legislative history of Law 3-52.** — Law 3-52, the "District of Columbia Insurance Act

Amendment of 1979," was introduced in Council and assigned Bill No. 3-53, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 20, 1979, and December 4, 1979, respectively. Signed by the Mayor on December 21, 1979, it was assigned Act No. 3-142 and transmitted to both Houses of Congress for its review.

**References in text.** — "The effective date of this chapter," referred to near the beginning of the section, means the effective date of the Act of October 9, 1940. Section 48 of such Act provided that the Act would become effective 30 days after October 9, 1940.

## § 35-1518. Formation of domestic companies.

Any domestic stock, mutual, or reciprocal company desiring to transact business in the District shall, after complying with the general laws of the District governing the formation of companies or corporations, file with the Commissioner copies of its articles of incorporation, bylaws, charter, proposed forms of policies, and such other information as may be necessary to manifest and explain the organization, objects, and purposes of the company, and to satisfy the Commissioner that such company has complied with the laws of the District regarding the formation of companies. Thereafter, upon application made to the Commissioner upon such forms as the Commissioner shall prescribe, the Commissioner, subject to the provisions of § 35-1505, shall issue to the company a certificate of authority to transact business in the District. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, ch. II, § 15; 1973 Ed., § 35-1318; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Department of Insurance abolished.** — See note to § 35-1503.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

## § 35-1519. Acquisition, use and disposition of real estate by domestic companies.

(a) A domestic company may acquire, hold, and convey real estate for the purpose and in the manner only following:

(1) The building in which it has its principal office and the land on which it stands;

(2) Such as shall be requisite for its convenient accommodation in the transaction of its business;

(3) Such as shall have been acquired for the accommodation of its business;

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due;

(5) Such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings; and

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

(b) All such real estate specified in subsection (a)(3), (4), (5), and (6) of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold by the company and disposed of within

5 years after it shall have acquired the title to the same or within 5 years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procures the certificate of the Commissioner that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the Commissioner shall direct in such certificate. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, ch. II, § 16; 1973 Ed., § 35-1319; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Cross references.** — As to the acquisition of real estate by marine insurance companies, see § 35-1419.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1520. Power of domestic mutual companies to borrow or assume liability.

A domestic mutual company may borrow or assume liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of law or as a surplus fund upon agreement which shall first be submitted to and approved by the Commissioner that such loan or advance with interest at a rate not exceeding 6% per annum shall be repaid only with the approval of the Commissioner whenever in his judgment the company shall be in possession of sufficient surplus in excess of a surplus equal to the amount required by this subchapter. Any such loan or advance shall not form a part of the legal liabilities of the company, but until such loan or advance has been repaid all statements published by such company or filed with the Commissioner shall show the amount thereof then remaining unpaid. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, ch. II, § 17; 1973 Ed., § 35-1320; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor’s notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter” at the end of the first sentence.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1521. Investment of funds by domestic companies.

(a) A domestic company shall invest its funds only in:

(1)(A) Bonds or other evidences of indebtedness of the United States, any state, the Dominion of Canada (“Canada”), or any province of Canada; or

(B) Obligations issued or guaranteed as to principal and interest by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the African Development Bank, or the Asian Development Bank;



(2) Bonds or other evidences of indebtedness of any county, city, town, village, school district, or other municipal district within the United States or the Dominion of Canada which shall be a direct obligation of the county, city, town, village, or district issuing the same;

(3) Bonds or notes secured by mortgages or deeds of trust on unencumbered real estate or perpetual leases thereon in the United States or Dominion of Canada worth not less than 50% more than the amount loaned thereon. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgage in an amount not less than the difference between two thirds of the value of the land and the amount of the loan; provided, that for the purposes of this section, real estate shall not be deemed to be encumbered within the meaning of this section by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner;

(4) Bonds or notes secured by mortgages insured by the Secretary of Housing and Urban Development; and in debentures issued by the Secretary of Housing and Urban Development; provided, that the restrictions in paragraph (3) of this subsection in regard to the ratio of the loan to the value of the property shall not apply to such insured mortgages;

(5) Bonds or other evidences of indebtedness of the farm loan banks authorized under the Federal Farm Loan Act or acts amendatory thereof or supplementary thereto; and bonds or other evidences of indebtedness of national mortgage associations;

(6) Stock or bonds and other evidences of indebtedness of any solvent corporation of any state or territory of the United States or of the District or of any province of the Dominion of Canada, excepting stock in its own corporation; provided, that no such investment shall be made in or loan made upon the security of any such stocks upon which dividends in cash during the period of 5 years next preceding such purchase in each fiscal year for said 5 years shall not have been paid, and upon which bonds any regular interest payment shall have been defaulted any time within 5 years prior to such purchase or loan;

(7) Loans upon the pledge of any of the securities aforesaid;

(8) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States;

(9) The bonds of the Home Owners' Loan Corporation, a corporation organized under and pursuant to the authority of §§ 1461 to 1468 of Title 12, United States Code; or

(10) Investments which are or may be authorized for domestic life insurers by § 35-634. A domestic company may hold its assets in the manner accorded life insurers.

(b) No loan or investment shall be made by any such company, unless the same shall have been authorized by the board of directors or by a committee thereof charged with the duty of supervising loans or investments.

(c) No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

(d) Nothing in this subchapter shall prohibit a company from accepting in good faith, to protect its interest, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Oct. 9, 1940, 54 Stat. 1072, ch. 792, ch. II, § 18; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Oct. 3, 1962, 76 Stat. 715, Pub. L. 87-739, § 2; 1973 Ed., § 35-1321; Oct. 30, 1981, D.C. Law 4-50, § 3, 28 DCR 4258; Mar. 9, 1983, D.C. Law 4-174, § 3, 29 DCR 5753; June 13, 1990, D.C. Law 8-141, § 3, 37 DCR 2654.)

**Cross references.** — As to investments of marine companies, see § 35-1418.

**Section references.** — This section is referred to in § 35-3702.

**Legislative history of Law 4-50.** — Law 4-50, the “District of Columbia Local Business Investment Act of 1981,” was introduced in Council and assigned Bill No. 4-137, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 14, 1981, and July 28, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-77 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-174.** — Law 4-174, the “Eviction Limitation, Fire and Casualty Amendment Act, and Anti-Drunk Driving Clarifying Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-141.** — Law 8-141, the “African Development Bank and Asian Development Bank Investment Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-127, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-197 and transmitted to both Houses of Congress for its review.

**Editor’s notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter” in subsection (d).

**Home Owners’ Loan Corporation abolished.** — The Home Owners’ Loan Corporation, referred to in paragraph (9) of subsection (a), was dissolved by order of the Secretary of the Home Loan Bank Board, effective February 3, 1954, pursuant to the Act of June 30, 1953, 67 Stat. 121.

## § 35-1522. Exclusive agency contracts of domestic companies.

No domestic company authorized to do an insurance business in the District shall have or make any contract with any person whereby such person is granted the exclusive right or privilege to solicit, procure, write, produce, or manage the entire insurance business of such company, or to collect premiums

therefor, unless such contract is filed with and approved in writing by the Commissioner. The Commissioner shall not approve any such contract which:

(1) Subjects the company to excessive charges for expenses or commissions; or

(2) Gives to such person the right to manage any of the affairs of such company or the exclusive right to solicit, procure, write, or produce the entire insurance business for such company, or to collect the premiums therefor for such unreasonable period as may jeopardize the interests or security of the company's policyholders. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, ch. II, § 19; 1973 Ed., § 35-1322; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to licensing of agents, see §§ 35-1534 to 35-1545.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" twice in the introductory paragraph.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1523. Authority to transact business — Foreign or alien companies.

Upon complying with the provisions of this subchapter, a foreign or alien company organized as a stock, mutual, or reciprocal company, or as a Lloyd's organization, but not otherwise, may be authorized by certificate of authority to transact in the District the kind or kinds of business which a domestic company similarly organized may be authorized to transact under this subchapter. Such certificate of authority shall be issued as provided under § 35-1505. The issuance of a certificate of authority to a Lloyd's organization shall be subject to the provisions of § 35-1524. Any company chartered by special act of the legislature of its state of domicile prior to the effective date of this subchapter, as provided in § 48 of this act, as a company without capital stock but doing business exclusively on the stock plan and maintaining at all times a surplus of not less than \$300,000 shall, in the administration of this subchapter, be considered as a stock company. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, ch. II, § 20; June 27, 1960, 74 Stat. 222, Pub. L. 85-526, § 1; 1973 Ed., § 35-1323.)

**Cross references.** — As to admission of foreign and alien marine insurance companies, see § 35-1405.

As to establishment of foreign branches of marine companies, see §§ 35-1421 and 35-1422.

**References in text.** — "Section 48 of this act," referred to in the last sentence of this section, means § 48 of the Act of October 9, 1940, which provided that such Act would be effective 30 days after October 9, 1940.

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter" throughout this section.

**Single insurer may do both life and casualty insurance business.** — The Life Insurance Act of the District of Columbia (chapters 3 to 8 of this title) and this subchapter do not prohibit the issuance of a certificate or certificates authorizing a single insurer to do both life and casualty insurance business. *Travelers Ins. Co. v. Jordan*, 287 F.2d 347 (D.C. Cir. 1961).



**§ 35-1524. Same — Lloyd's organizations.**

Individuals and aggregations of individuals transacting an insurance business upon the plan known as Lloyd's whereby the individual underwriters become liable severally for specified proportions of the whole amount insured by a policy, heretofore organized under the laws of a state of the United States, or of a foreign government, may be authorized to transact business in the District, upon the following conditions:

(1) They shall comply with and be subject to the same terms, conditions, and provisions as are imposed by this subchapter upon foreign stock insurance companies, except as provided in the next succeeding paragraph and except that the maximum amount of insurance to be assumed by an individual underwriter upon any single risk for each kind of insurance shall not exceed 10% of the value of the cash and securities deposited in trust by such underwriter, plus the share of admitted assets other than underwriter's deposits of such Lloyd's belonging to such underwriter, less the share of liabilities and reserves of such Lloyd's allocable to such underwriter, but in no event shall it exceed 10 per centum of the value of cash or securities deposited in trust by such underwriter;

(2) They shall have and shall at all times maintain surpluses of not less than \$300,000 in the aggregate and shall at all times have on deposit with an insurance department of a state of the United States, or with a bank or trust company designated by such insurance department, for the benefit of all policyholders within the United States the sum of at least \$350,000 in cash or in securities such as are required for the investment of the assets of insurance companies authorized to do business in the District; provided, that they shall not be required to establish or maintain such a deposit if they have on deposit in the hands of a bank or trust company in the United States as trustee cash deposits or securities issued by the United States worth not less than \$2,000,000 in the aggregate and held in trust for the benefit of all policyholders in the United States;

(3) They shall file with the Commissioner an authenticated copy of their powers of attorney and an authenticated copy of the trust agreement, or other agreement under which deposits made by underwriters are held;

(4) They shall notify the Commissioner forthwith of any amendments to their powers of attorney, deposit agreement, or other documents underlying their organization, by filing with the Commissioner an authenticated copy of such document as amended;

(5) They shall notify the Commissioner forthwith of any change in their names or change of attorney-in-fact, or change of address of their attorney-in-fact;

(6) In the case of an alien Lloyd's, their annual statement shall embrace only their condition and transactions in the United States, and may be verified by the oath of their resident manager or other person or persons having proper authority; and

(7) There shall be filed with the Commissioner by the attorney-in-fact at the time of filing the annual statement, or more often if the Commissioner

requires, a statement verified by the appropriate official of such Lloyd's, setting forth:

- (A) The names and addresses of all the underwriters of such Lloyd's;
- (B) A description of the cash and securities deposited in trust by each underwriter;
- (C) The maximum amount of insurance assumed by each underwriter upon any single risk or each kind of insurance; and
- (D) That the maximum amount of insurance assumed upon any single risk for each kind of insurance by any individual underwriter does not exceed the limitation provided for in paragraph (1) of this section. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, ch. II, § 20a; 1973 Ed., § 35-1324; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to admission of foreign and alien marine insurance companies, see § 35-1405.

As to limitation of risk, see § 35-1515.

As to capital and surplus requirements, see § 35-1516.

**Section references.** — This section is referred to in § 35-1523.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" once in (3), twice in (4), once in (5) and twice in the introductory language of (7).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter" in paragraph (1).

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1525. Procurement of certificate of authority by foreign or alien companies — Application forms.

A foreign or alien company, in order to procure a certificate of authority to transact business in the District, shall make application therefor to the Commissioner on forms prescribed and furnished by the Commissioner. Such forms shall be executed for the company, by its president or vice-president, or executive officer corresponding thereto, and verified by such officer, and if a corporation the corporate seal shall be thereto affixed, attested by its secretary or other proper officer. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, ch. II, § 21; 1973 Ed., § 35-1325; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to admission of foreign or alien marine insurance companies, see § 35-1405.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" twice.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

**§ 35-1526. Same — Delivery of certain documents to Commissioner; required showings; authorized examinations.**

A foreign or alien company shall deliver to the Commissioner: (1) an application of the company for a certificate of authority; (2) a copy of its articles of incorporation or articles of association and amendments thereto, duly certified by the proper officer of the state or country under whose laws the company is organized or incorporated, or if reciprocal, the power of attorney of the attorney-in-fact; (3) if an alien company, a copy of the appointment and authority of its United States manager, certified by a proper officer of the company; (4) a copy of its bylaws and regulations; (5) forms of contracts and policies it proposes to issue in the District, and forms of the applications therefor, if any; (6) proof of compliance with the service of process provisions of § 35-102; (7) a statement of its financial condition and business as of the end of the preceding calendar year, complying as to form and verification with the requirements of this subchapter for annual statements, or financial statement as of such later date as the Commissioner may require; (8) a copy of the last report of examination, certified to by an insurance commissioner or other proper supervisory official; and (9) a certificate from the proper official of the state or country wherein it is incorporated or organized, that it is duly incorporated or organized and is authorized to write the kind or kinds of insurance which it proposes to write in the District. Before a certificate of authority to transact business in the District is issued to a foreign or alien company, such company shall satisfy the Commissioner that: (1) the company is duly organized under the laws of the state or country under whose laws it professes to be organized and is authorized to do the business it is transacting or proposes to transact; (2) its name is not the same as, or so deceptively similar to, the name of any domestic company, or the name of any department of the federal government or existing corporation authorized to transact business in the District as to mislead the public or cause confusion; (3) if a stock company, it has a paid-up capital and surplus at least equal to the capital and surplus required by this subchapter or if a mutual company or reciprocal, it has a surplus and provision for contingent liability of policyholders at least equal to the surplus and provision for contingent liability of policyholders required by this subchapter; and (4) its funds are invested in accordance with the laws of its domicil, and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies. Before issuing a certificate of authority to a foreign or alien company, the Commissioner may cause an examination to be made of the condition and affairs of such company. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, ch. II, § 22; 1973 Ed., § 35-1326; Mar. 21, 1995, D.C. Law 10-233, § 6, 42 DCR 24; Apr. 18, 1996, D.C. Law 11-110, § 38, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 39, 44 DCR 1271; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)



**Cross references.** — As to admission of foreign or alien marine companies, see § 35-1405.

As to capital and surplus requirements, see § 35-1516.

**Effect of amendments.** — D.C. Law 10-233 substituted “(6) proof of compliance with the service of process provisions of § 35-102;” for “(6) the instrument authorizing service of process on the Superintendent required by § 35-1527;” in the first sentence.

D.C. Law 11-110 validated a previously made stylistic change in the first sentence.

D.C. Law 11-255 validated a previously made technical correction in (8).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of

1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Legislative history of Law 11-255.** — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor’s notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter” in the first and second sentences.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1527. Service of process upon foreign or alien companies.

Repealed. Mar. 21, 1995, D.C. Law 10-233, § 12, 42 DCR 24.

**Legislative history of Law 10-233.** — See note to § 35-1526.

## § 35-1528. Names or designations used by mutual companies and reciprocal or interinsurance exchanges.

Except as otherwise provided in § 35-1517, no mutual company shall be authorized to transact business in the District unless the name of such company shall include the word “mutual,” and no reciprocal or interinsurance exchange shall be authorized to transact business in the District unless the name or designation under which reciprocal or interinsurance contracts are to be exchanged shall include the words “reciprocal” or “interinsurance exchange,” or be supplemented by the following words immediately below the name or designation under which such contracts are exchanged: “A reciprocal” or “an interinsurance exchange.” (Oct. 9, 1940, 54 Stat. 1076, ch. 792, ch. II, § 24; 1973 Ed., § 35-1328.)

**Section references.** — This section is referred to in § 35-1517.

### § 35-1529. Premiums of mutual companies.

The maximum premium shall be expressed in the policy of a mutual company, and it may be solely a cash premium, or may be a cash premium and an additional contingent premium, which contingent premium shall be not less than the cash premium, but no mutual company, except as otherwise provided in § 35-1517, shall issue any policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of not less than \$600,000. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, ch. II, § 25; 1973 Ed., § 35-1329; Aug. 14, 1973, 87 Stat. 305, Pub. L. 93-89, title IV, § 401.)

**Section references.** — This section is referred to in § 35-1517.

### § 35-1530. Company reserves.

(a) In determining the financial condition of companies authorized under this subchapter, allowance shall be made for proper and adequate reserves for liabilities, including reserves for:

- (1) Unpaid losses and the expenses of the adjustment thereof;
- (2) Unearned premiums; and
- (3) Commissions, taxes, and all other legal obligations, contingent or otherwise, of which the company has knowledge.

(b) The computation of such reserves shall be in accordance with the provisions of the form of annual statement required under § 35-1511, and every authorized company shall maintain such reserves at all times. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, ch. II, § 26; 1973 Ed., § 35-1330.)

**Cross references.** — As to computation of unearned premium reserves, see § 35-1407.

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language of subsection (a).

### § 35-1531. Filing and approval of policy forms.

The Commissioner may require that all policy forms used by every company covering risks in the District be filed with the Commissioner. The Commissioner shall have authority to disapprove, within 60 days after the date of the receipt of a filing, the use in the District of any policy form which is inequitable, or does not comply with the requirement of the law of the District. If a policy form is not disapproved for use within the 60-day period described above, the Commissioner may not disapprove it for use unless it does not comply with the requirements of the law of the District. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, ch. II, § 27; 1973 Ed., § 35-1331; Sept. 8, 1995, D.C. Law 11-36, § 9(b), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 9(b), 42 DCR 7155; Sept. 20, 1996, D.C. Law 11-160, § 3, 43 DCR 3722; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to general powers of Commissioner, see § 35-1504.

**Effect of amendments.** — D.C. Law 11-90 added (b).

D.C. Law 11-160 rewrote the section.

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Temporary amendment of section.** — D.C. Law 11-36 added (b).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 10(b) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 9(b) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 11-36.** — See note to § 35-1503.

**Legislative history of Law 11-90.** — See note to § 35-1503.

**Legislative history of Law 11-160.** — Law 11-160, the “Automobile Insurance Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-157, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 26, 1996, it was assigned Act No. 11-296 and transmitted to both Houses of Congress for

its review. D.C. Law 11-160 became effective on September 20, 1996.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Report by Commissioner of Insurance and Securities.** — Section 5 of D.C. Law 11-160 provided that “Within two years of September 20, 1996, the Commissioner of Insurance and Securities shall prepare and submit to the Council of the District of Columbia for its review a report on the impact of this act on the private passenger motor vehicle insurance market or any part thereof, the funding for the Office of Insurance, the District of Columbia insurance premium tax, the number of insurers doing business in the District, and the number of insurers domiciled in the District of Columbia. In preparing such report, the Commissioner may request from specific private passenger motor vehicle insurers doing business in the District, or from all such insurers, reasonable and pertinent information. Information which is proprietary to any affected insurer shall be treated as confidential by the Commissioner, but may be used in the aggregate with other information from other affected insurers for statistical or other reporting purposes.”

**Department of Insurance abolished.** — See note to § 35-1503.

**Policy construction.** — Words used in an automobile insurance policy should be given their common or ordinary meaning, rather than meaning of lexicographers or those skilled in niceties of language. *Unkelsbee v. Homestead Fire Ins. Co.*, App. D.C., 41 A.2d 168 (1945).

**Cited in** *Bennett v. Amalgamated Cas. Ins. Co.*, 200 F.2d 129 (D.C. Cir. 1952).

## § 35-1532. Required provisions in health and accident policies.

The Commissioner may require that the provisions and conditions contained in any policy of insurance against loss or damage from sickness or bodily injury or death of the insured by accident issued by any company authorized by this subchapter to transact business in the District be made to conform to the requirements prescribed under § 35-517. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, ch. II, § 28; 1973 Ed., § 35-1332; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to exemption of benefits from health and accident insurance from claims of creditors, see § 35-522.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor’s notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter.”

**Department of Insurance abolished.** — See note to § 35-1503.



### § 35-1533. Discriminations prohibited.

Discrimination between individual risks of the same class or hazard in the amount of premiums or rates charged for any policy, or in the benefits or amount of insurance payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited, and the Commissioner is empowered after investigation to order removed at such time and in such manner as he shall specify any such discrimination which his investigation may reveal. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, ch. II, § 29; 1973 Ed., § 35-1333; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Department of Insurance abolished.** — See note to § 35-1503.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

### § 35-1534. Powers of agents, salaried employees and brokers.

Repealed. April 9, 1997, D.C. Law 11-227, § 16(c), 44 DCR 140.

**Cross references.** — As to insurance agents other than life, see §§ 35-1301 and 35-1302.

As to agents for marine insurance, see §§ 35-1423 to 35-1426.

As to approval of exclusive agency contracts by Commissioner, see § 35-1522.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Legislative history of Law 11-227.** — Law 11-227, the “Insurance Agents and Brokers Licensing Revision Act of 1996,” was introduced in Council and assigned Bill No. 11-523, which was referred to the Committee on Consumer

and Regulatory Affairs. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-455 and transmitted to both Houses of Congress for its review. D.C. Law 11-227 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor’s notes.** — This section was also amended by D.C. Law 11- (Act 11-524) § 10(r)(2), projected to become law on May 22, 1997. D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (e).

### § 35-1535. Compensation of unlicensed persons prohibited.

No company, policy-writing agent, soliciting agent, broker, or salaried employee shall pay any money or commission or brokerage or give or allow any valuable consideration to any person for or because of service in the District in negotiating or effecting a policy on any person, property, business activity, or insurable interest in the District, unless said person is duly licensed in conformity with this subchapter as a broker or as an agent or salaried employee of the company issuing the policy. This section shall not apply to contracts of reinsurance, and shall not apply to persons and kinds of insurance exempted under § 35-1542. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, ch. II, § 31; 1973 Ed., § 35-1335.)

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter” in the first sentence.

**§§ 35-1536 to 35-1541. Issuance or renewal of required license for agent, broker or salaried employee; licenses — effective dates; proration of fees; temporary transfer or renewal; application for renewal; refusal to renew; material false statements; revocation or suspension; penalty in lieu thereof; unauthorized solicitation or representation.**

Repealed. April 9, 1997, D.C. Law 11-227, § 16(c), 44 DCR 140.

**Effect of amendments.** — Former §§ 35-1536 and 35-1538 were also amended by D.C. Law 11- (Act 11-524), § 10(r)(2), projected to become law May 22, 1997. D.C. Law 11- (Act 11-524) amended the sections by substituting “Commissioner” for “Superintendent” wherever the terms appeared.

**Legislative history of Law 11-227.** — See note to § 35-1534.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**§ 35-1542. Exceptions to licensing provisions.**

The provisions of this subchapter relating to the licensing of policy-writing agents, soliciting agents, salaried company employees, and brokers shall not apply to the sale of personal accident insurance in the ticket offices of railroad companies or other common carriers, or in the offices of travel bureaus, nor to the business of ocean marine insurance, nor to insurance covering the property of railroad companies and other common carriers engaged in interstate commerce. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, ch. II, § 38; Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 9; 1973 Ed., § 35-1342.)

**Section references.** — This section is referred to in § 35-1535.

**Editor's notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter.”

**§ 35-1543. Persons not to act for unauthorized companies.**

Except as provided in § 35-1544, no person shall act as agent in the District for any company which is not authorized to do business in the District, nor shall any person directly or indirectly negotiate for or solicit applications for policies of, or for membership in, any company which is not authorized to do business in the District. The term “company” as used in this section shall include any association, society, company, corporation, joint-stock company, individual, partnership, trustee, or receiver engaged in the business of assuming risks of insurance, surety, or indemnity, and any Lloyd's organization, assessment, or cooperative fire company, or any reciprocal or interinsurance exchange and any company, association, or society, whether organized for

profit or not, conducting a business, including any of the principles or features of insurance, surety, or indemnity. Any person who violates any provision of this section upon conviction shall be fined not less than \$100 nor more than \$1,000 for each offense, or be imprisoned for not more than 12 months, or both, and any such person shall be personally liable to any resident of the District having claim against any such unauthorized company under any policy which said person has solicited or negotiated, or has aided in soliciting or negotiating; provided, that the provisions of this section shall not apply to any person who negotiates with an unauthorized company for policies covering his own property or interests, nor shall the provisions of this section apply to the officers, agents, or representatives of any company which is in process of organization under the laws of the District, and which is authorized temporarily to solicit or secure memberships or applications for policies for the purpose of completing such organization. Prosecutions for violations of this section shall be upon information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, ch. II, § 39; Feb. 22, 1958, 72 Stat. 26, Pub. L. 85-334, § 10; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 35-1343.)

**Scope of liability.** — Congress did not intend that liability under this section be limited to those who personally solicit. *Stover v. District of Columbia*, App. D.C., 32 A.2d 536 (1942).

**No defense that company was previously authorized.** — An accused charged with

soliciting insurance for a company not authorized to do business in the District of Columbia could not defend on the ground that the company had previously been granted permits to do business where such permits were not perpetual. *Stover v. District of Columbia*, App. D.C., 32 A.2d 536 (1942).

## § 35-1544. License to procure policies from unauthorized companies.

(a) Any agent or broker licensed in the District may, upon payment of a license fee, as provided under § 35-1545, be licensed to procure policies from companies which are not authorized to do business in the District where such person is, after diligent effort, unable to procure policies to cover the kind or kinds of business required from companies duly authorized to transact business in the District. Each agent or broker so licensed shall pay to the Collector of Taxes, through the Commissioner, on February 1st and August 1st of each year, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediately preceding 6 months' period ending December 31st and June 30th, respectively, and, in default of such payment, the Commissioner, through the Corporation Counsel, may bring suit to recover the same. Each agent or broker so licensed to procure policies from unauthorized companies shall execute and file with the Department on or before the 10th day of each month an affidavit covering the transactions of the previous calendar month, setting forth:

(1) The description and location of the insured property or risk, and the name of the assured;

(2) The amount insured in the policy or contract;



- (3) The gross premiums charged thereon;
- (4) The name of the company whose policy or contract is issued, and the kind or kinds of business effected; and

(5) That said agent or broker after diligent effort was unable to procure the policies or contracts required to protect the property or risk described in the affidavit from companies duly authorized to transact business in the District.

(b) Each agent or broker so licensed to procure policies from unauthorized companies shall keep a separate account of the business transacted thereunder, which shall be open at all times to the inspection of the Commissioner. The license provided for in this section may be revoked or renewal thereof refused for failure to pay the tax or to file the affidavit specified herein, or if the agent or broker procured policies from unauthorized companies without exercising diligent effort to secure the required business in duly authorized companies, or if the agent or broker procured policies from unauthorized companies whose standards of solvency and management do not meet the requirements necessary for the protection of the policyholders, or if the agent or broker has placed with any unauthorized company any risk which could be placed with an authorized company except for abnormal provisions of the policy, or if the agent or broker has procured from an unauthorized company any policy which covers a risk of a class generally covered in the District by authorized companies and which authorized companies would cover at a rate not higher than that charged by authorized companies on other District risks of the same class. (Oct. 9, 1940, 54 Stat. 1080, ch. 972, ch. II, § 40; Apr. 22, 1944, 58 Stat. 192, ch. 173, § 4; 1973 Ed., § 35-1344; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-1543.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in (a) and once at the end of the first sentence of (b).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

**Office of Collector of Taxes abolished.** — See note to § 35-1506.

## § 35-1545. License fees.

(a) Annual fees to be paid through the Commissioner to the District of Columbia for licenses issued under this subchapter shall be as follows:

(1) For policy-writing agent or for firms, partnerships, or corporations licensed as such, \$100, renewal fee, \$100, without regard to the number of companies represented; provided, that, in the case of firms, partnerships, and corporations, an additional fee of \$10 shall be charged for each person in excess of 2 who is named in such license as required under § 35-1536;

(2) For soliciting agent, \$50 for each company, renewal fee, \$50 represented by such soliciting agent, or for each company represented by any policy-writing agent through which such soliciting agent solicits; provided, that no soliciting agent shall be required to pay for soliciting agents’ licenses a sum in excess of \$100 for any 1 licensing year;

(3) For salaried company employee authorized to sign policies and to solicit insurance, \$75, without regard to the number of companies represented by such salaried company employee;

(4) For salaried company employee authorized to solicit but not authorized to sign policies, \$50 for each company represented by said employee; provided, that the aggregation of such fees shall not exceed \$100 for any 1 license year;

(5) For nonresident or resident brokers, \$100, with an annual fee of \$100, except that the fee shall be \$10 in case the applicant for a resident broker's license is subject also to the fee prescribed under paragraph (1) or (3) of this subsection;

(6) For license to procure lines in unauthorized companies, \$100, with an annual renewal fee of \$100;

(7) For new appointment fees, salaried company employees without broker privileges, a fee of \$75; salaried company employees with broker privileges, a fee of \$85, annual renewal fee of \$85;

(8) For rule filings or change, \$25 fee; and

(9) For registration and certification for Risk Retention and Purchasing Groups, \$250 annual renewal fee.

(b) Under the license issued to any policy-writing agent or salaried company employee, or in the name of any firm, partnership, or corporation as provided under § 35-1536, and for which license a fee has been paid in accordance with paragraph (1) or (3) of subsection (a), there may be added names of persons who are employed in or who actively function through the District office of the policy-writing agent, salaried company employee, or firm, partnership, or corporation, and who have company authority to sign but not to solicit policies. For such persons there shall be charged a fee of \$2 per year for each company whose policies such person is authorized to sign.

(c) Broker's licenses may be issued in the names of individuals, firms, partnerships, or corporations. In the case of firms, partnerships, or corporations, the authority to solicit shall extend only to the individuals who are designated in the license and in the application therefor as having authority to solicit, and there shall be charged for each such individual in excess of 2 an additional fee of \$10.

(d) Licenses to procure lines in unauthorized companies shall be issued in the names of individuals only.

(e) The Mayor has the authority to amend all fees referred to in this act by way of rulemaking. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (Oct. 9, 1940, 54 Stat. 1081, ch. 792, ch. II, § 41; 1973 Ed., § 35-1345; Feb. 23, 1980, D.C. Law 3-52, § 6, 27 DCR 26; June 14, 1994, D.C. Law 10-128, § 403(a), 41 DCR 2096; Apr. 18, 1996, D.C. Law 11-110, § 61(a), 43 DCR 530; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(2), 44 DCR 1730.)

**Cross references.** — As to effective date of license and proration of fees, see § 35-1537.

As to refund of fees when license refused, see § 47-1318.

**Section references.** — This section is referred to in §§ 35-1539 and 35-1544.

**Effect of amendments.** — D.C. Law 11-110 validated a previously made substitution of “shall not exceed” for “not to exceed” in (a)(4).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the introductory language of (a).

**Legislative history of Law 3-52.** — See note to § 35-1517.

**Legislative history of Law 10-128.** — Law 10-128, the “Omnibus Budget Support Act of 1994,” was introduced in Council and assigned Bill No. 10-575, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 22, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 14, 1994, it was assigned Act No. 10-225 and transmitted to both Houses of

Congress for its review. D.C. Law 10-128 became effective on June 14, 1994.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor’s notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 15 as subchapter I, “subchapter” has been substituted for “chapter” in the introductory language of subsection (a).

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1546. Violations of provisions.

(a) Any person who violates any of the provisions of this subchapter, or fails to comply with any duty imposed upon such person by any of the provisions of this subchapter, for which violation or failure no penalty is elsewhere provided by this subchapter, or by the laws of the District, shall, upon conviction thereof, be fined for each offense not exceeding \$1,000 or be imprisoned for not more than 12 months, or both. Prosecutions authorized by this section shall be upon information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, ch. II, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 35-1347; Oct. 5, 1985, D.C. Law 6-42, § 447(c), 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(r)(3), 38 DCR 314.)

**Cross references.** — As to revocation or suspension of certificate of authority, see § 35-1506.

As to penalties for false statements or reports, see §§ 35-1512 and 35-1513.

As to penalty upon foreign or alien companies for transacting business before designating attorney to receive service of process, see § 35-1527.

As to revocation or suspension of agent’s license, see § 35-1540.

As to penalty against agent for representing unauthorized company, see § 35-1543.

**Section references.** — This section is referred to in §§ 35-1011 and 35-1553.

**Legislative history of Law 6-42.** — See note to § 35-1540.

**Legislative history of Law 8-237.** — See note to § 35-1506.

**Editor’s notes.** — Because of the codification of Pub. L. 89-403 as subchapter II of this chapter, and the designation of the preexisting



text of Chapter 15 as subchapter I, "subchapter" has been substituted for "chapter" in subsection (b).

## **§§ 35-1547 to 35-1549. Appeals from actions of Superintendent to Mayor; judicial proceedings to contest actions of Superintendent; severability.**

Repealed. April 9, 1997, D.C. Law 11-227, § 16(c), 44 DCR 140.

**Legislative history of Law 11-227** — See note to § 35-1534.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Editor's notes.** — Former § 35-1547 was also amended by D.C. Law 11- (Act 11-524),

§ 10(r)(2), projected to become law on May 22, 1997. D.C. Law 11- (Act 11-524) amended former § 35-1547 by substituting "Commissioner" for "Superintendent" in the first sentence.

### *Subchapter II. Insurance Premium Finance Companies.*

## **§ 35-1551. Applicability of provisions.**

The provisions of this subchapter shall not apply with respect to:

- (1) Any insurance company licensed to do business in the District;
- (2) Any banking institution, trust, loan, mortgage, safe deposit, or title company, building association, credit union, moneylenders, or common trust fund authorized to do business in the District;
- (3) The inclusion of a charge for insurance in connection with an installment sale of a motor vehicle make in accordance with Chapter 11 of Title 40; or
- (4) The financing of insurance premiums in the District in accordance with the provisions of §§ 28-3301 and 28-3302 relating to rates of interest. (Oct. 9, 1940, ch. 792, ch. III, § 51; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1361.)

## **§ 35-1552. Definitions.**

For the purposes of this subchapter:

- (1) The term "insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.
- (2) The term "premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge as authorized and limited by this subchapter.
- (3) The term "licensee" means a premium finance company holding a license issued by the Commissioner under this subchapter. (Oct. 9, 1940, ch. 792, ch. III, § 52; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1362; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

### § 35-1553. Licenses — Persons required to obtain; fees; other requirements.

(a) No person shall engage in the business of financing insurance premiums in the District without first having obtained a license as a premium finance company from the Commissioner. Any person who shall engage in the business of financing insurance premiums in the District without obtaining a license as provided hereunder shall, upon conviction in the Superior Court of the District of Columbia, be guilty of a misdemeanor and shall be subject to the penalties in § 35-1546.

(b) The annual license fee shall be \$150. Licenses may be renewed from year to year as of the 1st day of May of each year upon payment of the fee of \$150. The fee for said license shall be paid through the Commissioner to the District of Columbia Treasurer.

(c) The person to whom the license or the renewal thereof may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the Commissioner may require. The Commissioner shall have authority, at any time, to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this subchapter. (Oct. 9, 1940, ch. 792, ch. III, § 53; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 35-1363; June 14, 1994, D.C. Law 10-128, § 403(b), 41 DCR 2096; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(3), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 10-128.** — See note to § 35-1545.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

### § 35-1554. Same — Issuance or renewal.

(a) Upon the filing of an application and the payment of the license fee the Commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this subchapter. If the Commissioner does not so find, he shall, within 30 days after he has received such application, at the request of the applicant, give the applicant a full hearing.

(b) The Commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed:

(1) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(2) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and

(3) If a corporation, is a corporation incorporated under the laws of the District or a foreign corporation authorized to transact business in the District. (Oct. 9, 1940, ch. 792, ch. III, § 54; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1554; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

**§ 35-1555. Same — Revocation, suspension or refusal to renew; penalty in lieu of revocation or suspension; right of applicant or licensee to administrative or judicial hearing.**

(a) The Commissioner may revoke or suspend the license of any premium finance company when and if after investigation it appears to the Commissioner that:

- (1) Any license issued to such company was obtained by fraud;
- (2) There was any misrepresentation in the application for the license;
- (3) The holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company;
- (4) Such company has violated any of the provisions of this subchapter; or
- (5) Such company has been rebating part of the service charge as allowed and permitted herein to any insurance agent or any employee of an insurance agent or to any other person as an inducement to the financing of any insurance policy with the premium finance company.

(b) Before the Commissioner shall revoke, suspend, or refuse to renew the license of any premium finance company, he shall give to such person an opportunity to be fully heard and to introduce evidence in his behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing as herein provided, the Commissioner may subject such company to a penalty of not more than \$200 for each offense when in his judgment he finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by such company through the office of the Commissioner to the District of Columbia Treasurer. At any hearing provided by this section, the Commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(c) If the Commissioner refuses to issue or renew any license or if any applicant or licensee is aggrieved by any action of the Commissioner, said applicant or licensee shall have the right to a hearing and court proceeding as provided for in §§ 35-1539, 35-1547 and 35-1548. (Oct. 9, 1940, ch. 792, ch. III, § 55; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1365; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(3), 44 DCR 1730.)



**Cross references.** — As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1510 and 11-722.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1556. Records.

(a) Every licensee shall maintain records of its premium finance transactions and the said records shall be open to examination and investigation by the Commissioner. The Commissioner may at any time require any licensee to bring such records as he may direct to the Commissioner’s office for examination.

(b) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least 3 years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. (Oct. 9, 1940, ch. 792, ch. III, § 56; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1366; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(3), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524), in (a), substituted “Commissioner” for “Superintendent” twice, and substituted “Commissioner’s” for “Superintendent’s.”

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1557. Rules and regulations.

The Commissioner shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this subchapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this subchapter. (Oct. 9, 1940, ch. 792, ch. III, § 57; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1367; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(r)(3), 44 DCR 1730.)

**Cross references.** — As to authority of Council to prescribe rules and regulations necessary in making chapter effective, see § 35-1504.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1503.

**Department of Insurance abolished.** — See note to § 35-1503.

## § 35-1558. Form and contents of agreements.

(a) A premium finance agreement shall:

(1) Be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least 8-point type;

(2) Contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the

place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

(3) Set forth the following items where applicable:

(A) The total amount of the premiums;

(B) The amount of the downpayment;

(C) The principal balance (the difference between subparagraphs (A) and (B) of this paragraph);

(D) The amount of the service charge;

(E) The balance payable by the insured (sum of subparagraphs (C) and (D) of this paragraph); and

(F) The number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(b) The items set out in subsection (a)(3) of this section need not be stated in the sequence or order in which they appear in such paragraph, and additional items may be included to explain the computations made in determining the amount to be paid by the insured. (Oct. 9, 1940, ch. 792, ch. III, § 58; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1368.)

### § 35-1559. Service charges.

(a) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by this subchapter.

(b) The service charge is to be computed on the balance of the premiums due (after subtracting the downpayment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(c) The service charge shall be a maximum of \$10 per \$100 per year plus an additional charge of \$20 per premium finance contract which need not be refunded upon cancellation or prepayment. (Oct. 9, 1940, ch. 792, ch. III, § 59; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1369; Nov. 15, 1983, D.C. Law 5-40, § 2(a), 30 DCR 4994.)

**Legislative history of Law 5-40.** — Law 5-40, the "Fire and Casualty Act Amendment Act of 1983," was introduced in Council and assigned Bill No. 5-111, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings

on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-65 and transmitted to both Houses of Congress for its review.

### § 35-1560. Delinquency charges.

A premium finance agreement may provide for the payment by the insured of a delinquency charge of \$1 to a maximum of 5% of the delinquent installment which is in default for a period of 5 days or more. (Oct. 9, 1940, ch. 792, ch. III, § 60; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1370; Nov. 15, 1983, D.C. Law 5-40, § 2(b), 30 DCR 4994.)

Legislative history of Law 5-40. — See note to § 35-1559.

### § 35-1561. Cancellation of insurance contracts.

(a) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(b) Not less than 10 days written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such 10-day period.

(c) After expiration of such 10-day period, the premium finance company may thereafter request, in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address.

(d) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the 2nd business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation.

(e) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company affecting the cancellation for the account of the insured or insureds.

(f) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured provided that no such refund shall be required if it amounts to less than \$1.

(g) When a default results in the cancellation of an insurance contract listed in the premium finance agreement, the premium finance agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquent charge imposed in respect of the installment or installments in default and \$10; provided, however, that should the cancellation notice be withdrawn prior to its effective date and the insurance coverage reinstated, the agreement may provide for payment by the insured of a reinstatement charge equal to the cancellation charge herein provided. (Oct. 9, 1940, ch. 792, ch. III, § 61; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1371; Nov. 15, 1983, D.C. Law 5-40, § 2(c), 30 DCR 4994.)



**Legislative history of Law 5-40.** — See note to § 35-1559.

**Where insured not entitled to notice of cancellation of policy.** — The thirty-day notice provisions of § 35-2109(b) apply only in cases of “cancellation or refusal to renew by an insurer” of a policy of motor vehicle insurance. The insured is not entitled to notice of cancellation if he is the party cancelling the contract, as one is not given notice of one’s own actions, and it follows from the unambiguous provisions of subsection (c) that an insured is not entitled

to notice of cancellation from the insurer where the cancellation is requested by finance company acting as his agent. *Atwater v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 566 A.2d 462 (1989).

**Scope of § 35-2109.** — In contrast to this section, which applies to cancellation of policies by premium finance companies with power of attorney, § 35-2109 by its terms applies only to cancellation of policies by insurers. *Atwater v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 566 A.2d 462 (1989).

## § 35-1562. Validity of agreements as secured transactions.

No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledges, and encumbrances, successors, or assigns. (Oct. 9, 1940, ch. 792, ch. III, § 62; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; 1973 Ed., § 35-1372.)

## CHAPTER 16. REGULATION OF FIRE INSURANCE RATES.

Sec.

35-1601 to 35-1609. [Repealed].

**§§ 35-1601 to 35-1609. Definitions; applicability of provisions; adjustment of rates; removal of discriminations; right of aggrieved party to administrative or judicial hearing; Rating Bureau; conformance of policies to requirements of Superintendent; excess rates; records required to be kept; examination of records; required reports; filing requirements; violations.**

Repealed. Oct. 21, 1993, D.C. Law 10-40, § 13(b), 40 DCR 6009.

**Legislative history of Law 10-40.** — Law 10-40, the “Insurance Regulatory Trust Fund Act of 1993,” was introduced in Council and assigned Bill No. 10-93, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-75 and transmitted to both Houses of Congress for its review. D.C. Law 10-40 became effective on October 21, 1993.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on

first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Editor’s notes.** — Section 10(s) of D.C. Law 11- (Act 11-524), projected to become law on May 22, 1997 purported to amend former §§ 35-1601, 35-1603, 35-1604, 35-1605, 35-1607, and 35-1608 without regard to the repeal of these sections by D.C. Law 10-40. D.C. Law 11- (Act 11-524) purported to amend the sections by substituting “Commissioner” and “Commissioner of Insurance and Securities” for “Superintendent” and “Superintendent of Insurance of the District of Columbia”, respectively.

## CHAPTER 17. REGULATION OF CASUALTY AND OTHER INSURANCE RATES.

Sec.

35-1701. Definitions.

35-1702. Applicability of chapter.

35-1703. Making of rates.

35-1704. Filing requirements of individual companies; adjustment of rates; removal of discriminations.

35-1705. Cooperative and concerted action authorized.

35-1706. Filing requirements of organizations of companies; unfair practices; supervision of rating organizations.

Sec.

35-1707. Information to be furnished to insured or Commissioner; grievance procedure.

35-1708. Additional powers and duties of Commissioner.

35-1709. Violations.

35-1710. Judicial proceedings to contest actions of Commissioner.

## § 35-1701. Definitions.

In this chapter, unless the context otherwise requires:

(1) "District" means the District of Columbia.

(2) "Commissioner" means the Commissioner of Insurance and Securities.

(3) "Insurance" includes (but is not limited to) fidelity, surety, and guaranty bonds.

(4) "Company" means any insurer, whether stock, mutual, reciprocal, interinsurer, Lloyd's, or any other form or group of insurers.

(5) "Policy" means an insurance policy or contract as defined by subchapter I of Chapter 15 of this title.

(6) "Agent" means and shall include any individual, copartnership, or corporation acting in the capacity of or licensed as a "policy-writing agent," "soliciting agent," or "salaried company employee" as defined by subchapter I of Chapter 15 of this title. (May 20, 1948, 62 Stat. 242, ch. 324, § 1; 1973 Ed., § 35-1501; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(t), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) rewrote (2).

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a

Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of



Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities and the Insurance Admin-

istration in the Department of Consumer and Regulatory Affairs was abolished.

## § 35-1702. Applicability of chapter.

This chapter shall apply to all forms of fire, casualty, motor vehicle, explosion, sprinkler leakage, and inland marine insurance in the District and to all forms of insurance within the scope of subchapter I of Chapter 15 of this title; provided, that this chapter shall not apply to reinsurance other than joint reinsurance to the extent provided in this chapter, and shall not apply to:

(1) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(2) Title insurance;

(3) Accident and health insurance;

(4) Insurance against loss of or damage to aircraft or to liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft; and

(5) To insurance issued to self-insurers and insuring against loss in excess of at least \$10,000 resulting from any 1 accident or event, except when rates therefor are made by a rating organization. (May 20, 1948, 62 Stat. 242, ch. 324, § 2; 1973 Ed., § 35-1502; Oct. 21, 1993, D.C. Law 10-40, § 14, 40 DCR 6009.)

**Legislative history of Law 10-40.** — Law 10-40, the "Insurance Regulatory Trust Fund Act of 1993," was introduced in Council and assigned Bill No. 10-93, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-75 and transmitted to both Houses of Congress for its review. D.C. Law 10-40 became effective on October 21, 1993.

## § 35-1703. Making of rates.

(a) Rates for insurance within the scope of this chapter shall not be excessive, inadequate, or unfairly discriminatory.

(b) Due consideration shall be given to past and prospective loss experience within and outside the District, to physical hazards, to safety and loss prevention factors, to underwriting practice and judgment, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by companies to their policyholders, members, or subscribers; to past and prospective expenses both country-wide and those specially applicable to the District; to whether classification rates exist generally for the risks under consideration; to the rarity or peculiar characteristics of the risks; and to all other relevant factors within and outside the District. Due consideration shall be given to the net investment income (including the realized capital gains) on all cash and invested assets held against all unearned premium reserves and loss reserves of any nature. Unrealized capital gains or losses shall not be considered in the rate-making process.

(c) Nothing in this section shall be taken to prohibit as unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon the size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations attributable to such risks provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

(d) Nothing in this chapter shall be construed to require uniformity in insurance rates, classifications, rating plans, or practices.

(e) Nothing in this chapter shall abridge or restrict the freedom of contract of companies, agents, brokers, or employees with reference to the commissions or salaries to be paid to such agents, brokers, or employees by companies.

(f)(1) Every classification plan fixed, established, and promulgated by the Commissioner shall be so structured as to produce rates or premium charges which are adequate, not excessive, and not unfairly discriminatory.

(2) Every final rate or premium charge proposed to be used by any motor vehicle insurer shall be filed with the Commissioner and shall be adequate, not excessive, and not unfairly discriminatory. A motor vehicle insurance rate may be held by the Commissioner to be excessive if the rate is unreasonably high for the insurance provided and is not actuarially justified based on the commonly accepted actuarial principles. In determining whether rates comply with standards under this subsection, due consideration shall be given for past and prospective loss experience within and outside the District, a reasonable margin for underwriting profit and contingencies, dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members or subscribers, past and prospective expenses, both countrywide and in the District, and investment income earned or realized by insurers both from their unearned premiums and from their loss reserve funds. If the Commissioner finds after a hearing that a rate is not in compliance with this subsection, he shall order that its use be discontinued for any policy issued or renewed after a date specified in the order and the order may prospectively provide for premium adjustment of any policy then in force.

(g) No company, agent, or broker shall make, issue, or deliver, or knowingly permit the making, issuance, or delivery of any policy of insurance within the scope of this chapter contrary to pertinent filings which are in effect for the company as provided in this chapter, except that upon the written application of the insured stating his reasons therefor, filed with and approved by the Commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(h) Every insurer writing motor vehicle insurance in the District shall file with the Commissioner, in such form as he shall order, complete financial records showing the amount of profit on every line of motor vehicle insurance during the previous year.

(i) The Office of the People's Counsel shall serve as advocate for consumers in rate hearings before the Commissioner and the costs associated with such advocacy shall be borne by the insurer or insurers requesting the rate hearing. (May 20, 1948, 62 Stat. 243, ch. 324, § 3; 1973 Ed., § 35-1503; Sept. 18, 1982,

D.C. Law 4-155, § 14(a), 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96, § 3, 32 DCR 7245; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(t), 44 DCR 1730; Sept. 20, 1996, D.C. Law 11-160, § 4, 43 DCR 3722.)

**Section references.** — This section is referred to in § 35-1704.

**Effect of amendments.** — D.C. Law 11-160 added the last sentence in (b); and rewrote (f)(2) and (h).

D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 4-155.** — Law 4-155, the "Compulsory/No-Fault Motor Vehicle Insurance Act of 1982," was introduced in Council and assigned Bill No. 4-140, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first, amended first, second amended first, and second readings on May 11, 1982, May 25, 1982, June 8, 1982, and June 22, 1982, respectively. Deemed approved without Mayoral signature upon expiration of the Mayoral Review period on July 22, 1982, it was assigned Act No. 4-226 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-96.** — Law 6-96, the "Compulsory/No-Fault Motor Vehicle Insurance Act of 1982 Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-249, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 22, 1985, it was assigned Act No. 6-104 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-160.** — Law 11-160, the "Automobile Insurance Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-157, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 26, 1996, it was assigned Act No. 11-296 and transmitted to both Houses of Congress for its review. D.C. Law 11-160 became effective on September 20, 1996.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1701.

**Report by Commissioner of Insurance and Securities.** — Section 5 of D.C. Law

11-160 provided that "Within two years of September 20, 1996, the Commissioner of Insurance and Securities shall prepare and submit to the Council of the District of Columbia for its review a report on the impact of this act on the private passenger motor vehicle insurance market or any part thereof, the funding for the Office of Insurance, the District of Columbia insurance premium tax, the number of insurers doing business in the District, and the number of insurers domiciled in the District of Columbia. In preparing such report, the Commissioner may request from specific private passenger motor vehicle insurers doing business in the District, or from all such insurers, reasonable and pertinent information. Information which is proprietary to any affected insurer shall be treated as confidential by the Commissioner, but may be used in the aggregate with other information from other affected insurers for statistical or other reporting purposes."

**Department of Insurance abolished.** — See note to § 35-1701.

**Prohibition of geographic discrimination not preempted.** — A District of Columbia regulation generally precluding an insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire, and casualty risks in the District and prohibiting cancellation of those policies for other than specified conditions is not preempted by this title. *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323 (D.C. Cir. 1973).

**Primary concern of Commissioner.** — Superintendent's (now Commissioner's) primary concern should be to assure that the insurer's fiduciary obligation to the insured is fulfilled in the form of competitive rates which are not "excessive, inadequate or unfairly discriminatory." *GEICO v. Montgomery*, App. D.C., 465 A.2d 813 (1983).

**Reasons for adjustment or rejection of rate produced by market required.** — The Superintendent (now Commissioner) must articulate factually supported reasons for the adjustment or rejection of the rate produced by ordinary market influences. *GEICO v. Montgomery*, App. D.C., 465 A.2d 813 (1983).



**§ 35-1704. Filing requirements of individual companies; adjustment of rates; removal of discriminations.**

(a) On and after July 1, 1948, every company shall file with the Commissioner, either directly or through a licensed rating organization of which it is a member or subscriber, except as to rates on inland marine risks which are not made by a rating organization and which by general custom of the business are not written according to manual rates or rating plans, all rates and rating plans, rules, and classifications which it uses or proposes to use in the District.

(b) Whenever it shall be made to appear to the Commissioner, either from his own information or from complaint of any party alleging to be aggrieved thereby, that there are reasonable grounds to believe that the rates on any or on all risks or classes of risks or kinds of insurance within the scope of this chapter are not in accordance with the terms of this chapter, it shall be his duty, and he shall have the full power and authority, to investigate the necessity for an adjustment of any or all such rates.

(c) After such an investigation of any such rates, the Commissioner shall, before ordering any appropriate adjustment thereof, hold a hearing upon not less than 10-days written notice specifying the matters to be considered at such hearing, to every company and rating organization which filed such rates, provided the Commissioner need not hold such hearing in the event he is advised by every such company and rating organization that they do not desire such hearing. If after such hearing the Commissioner determines that any or all of such rates are excessive or inadequate, he shall order appropriate adjustment thereof. Pending such investigation and order of the Commissioner, rates shall be deemed to have been made in accordance with the terms of this chapter. No order of adjustment shall affect any contract or policy made or issued prior to the effective date of such order unless: (1) the adjustment to be effected is substantial and exceeds the cost to the companies of making the adjustment; and (2) the order is made after the prescribed investigation and hearing and within 30 days after the filing of rates affected. In no event shall an order of adjustment affect an existing contract or policy other than one of workmen's compensation or automobile liability insurance required by law, order, rule, or regulation of a public authority, or a contract or policy of any type as to which the rates are not, by general custom of the business or because of rarity and peculiar characteristics, written according to normal classification or rating procedure.

(d) In determining the necessity for an adjustment of rates, the Commissioner shall be bound by all of the provisions of § 35-1703.

(e) The Commissioner is further empowered to investigate and to order removed at such time and in such manner as he shall specify any unfair discrimination existing between individual risks or classes of risks. (May 20, 1948, 62 Stat. 243, ch. 324, § 4; 1973 Ed., § 35-1504; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(t), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1701.

**Department of Insurance abolished.** — See note to § 35-1701.

**Primary concern of Commissioner.** — The Superintendent’s (now Commissioner’s) primary concern should be to assure that the insurer’s fiduciary obligation to the insured is

fulfilled in the form of competitive rates which are not “excessive, inadequate or unfairly discriminatory.” *GEICO v. Montgomery*, App. D.C., 465 A.2d 813 (1983).

**Reasons for adjustment or rejection of rate produced by market required.** — The Superintendent (now Commissioner) must articulate factually supported reasons for the adjustment or rejection of the rate produced by ordinary market influences. *GEICO v. Montgomery*, App. D.C., 465 A.2d 813 (1983).

## § 35-1705. Cooperative and concerted action authorized.

(a) Subject to the provisions of this chapter, 2 or more companies may cooperate or act in concert with each other:

(1) As a rating organization, for the purpose of making rates, rating plans, or rating systems. No company shall be deemed to be a rating organization;

(2) As an advisory organization, for the purpose of preparing policy forms, making underwriting rules, surveys, or inspections incident to but not including the making of rates, rating plans, or rating systems, or collecting and furnishing to companies or rating organizations loss or expense statistics or other statistical data, and acting in an advisory as distinguished from a rate making capacity;

(3) As a group or fleet of companies operating under the same general management and control, for the purpose of conducting a complete insurance service;

(4) As a group, association, or other organization for the purpose of joint underwriting or joint reinsurance, or of equitable apportionment and proper rating of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods.

(b) No company shall be required by this chapter to be a member or subscriber of any rating organization. (May 20, 1948, 62 Stat. 244, ch. 324, § 5; 1973 Ed., § 35-1505.)

**Section references.** — This section is referred to in § 35-1706.

**Cited in** *Firemen’s Ins. Co. v. Washington*, 483 F.2d 1323 (D.C. Cir. 1973).

## § 35-1706. Filing requirements of organizations of companies; unfair practices; supervision of rating organizations.

(a) Every group, association, or other organization of companies authorized to act as such under the terms of this chapter, except groups or fleets described in subsection (a)(3) of § 35-1705, shall file with the Commissioner: (1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation; and of its bylaws, rules, and regulations governing the conduct of its business; (2) a list of its members and subscribers, if any; and (3) proof of its compliance with the service of process provisions of § 35-102.

(b) No group, association, or organization shall engage in any unfair or unreasonable practice in the conduct of its business.

(c)(1) No rating organization shall conduct its business with respect to insurance on risks located within the District without a license from the Commissioner. To obtain such a license, a rating organization shall, in addition to the matters specified in subsection (a) of this section, supply to the Commissioner a statement relating to its qualifications as a rating organization and its ability adequately to administer the rates, rules, and regulations which it may make in behalf of its members and subscribers.

(2) If the Commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization, he shall forthwith issue a license specifying the kinds of insurance and subdivisions thereof for which the applicant is authorized to act as a rating organization, but, if the Commissioner does not so find within 30 days after he has received such application, he shall, at the request of the applicant, give the applicant a full hearing.

(3) Licenses issued pursuant to this section shall remain in effect until suspended or revoked by the Commissioner unless voluntarily surrendered by the rating organization. The fee for said license shall be \$250 and shall be paid by the applicant through the Commissioner to Collector of Taxes, District of Columbia. Licenses issued pursuant to this section may, at the request of the rating organization, be amended by the Commissioner so as to include authority with respect to additional kinds of insurance and subdivisions thereof, provided the rating organization satisfies the Commissioner that such amendment would not in any way be contrary to or inconsistent with the provisions of this chapter; provided, that an additional fee in the amount of \$50 shall be charged for such amendment.

(4) The license of any rating organization may be suspended or revoked by the Commissioner for failure to comply with this chapter or for incompetence or untrustworthiness. The Commissioner shall not revoke or suspend the license of any rating organization until he has given it not less than 30 days' notice of the proposed revocation or suspension and of the grounds alleged therefor and has afforded the rating organization an opportunity to be heard. In lieu of revoking or suspending the license of any rating organization after hearing and for the causes named herein, the Commissioner may subject such rating organization to a penalty of not more than \$250 when in his judgment he finds that the public interest would be best served by the continued operation of the rating organization. The amount of any such penalty shall be paid by the rating organization through the Commissioner to Collector of Taxes, District of Columbia.

(d) Every licensed rating organization shall, subject to reasonable rules and regulations, permit any company not a member to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act; shall give notice of changes in such rules and regulations to its subscribers; and shall furnish its rating service without discrimination to its members and subscribers.

(e) No licensed rating organization shall adopt any rule, effect any agreement, or take any action contrary to or inconsistent with the provisions of this



chapter or which would have the effect of prohibiting, restricting, or regulating the payment or allowance by any of its members or subscribers of dividends, savings, or unabsorbed premium deposits; nor practice or sanction any plan or act of boycott, coercion, or intimidation; nor enter into or sanction any contract or act by which any person is restrained from lawfully engaging in the business of insurance.

(f) Every member of or subscriber to a licensed rating organization shall adhere to the filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings if it has filed with the rating organization and with the Commissioner the deviation to be applied and information necessary to justify the deviation and provided such deviation is approved by the Commissioner. If approved, the deviation shall remain in force until such approval is withdrawn by the Commissioner after notice to the company or withdrawn by the company with the approval of the Commissioner. The Commissioner shall approve any such deviation unless he finds that the deviation to be applied would not be uniform in its application or would be inconsistent with the provisions of this chapter, but unless he approves the deviation within 30 days he shall, within a reasonable time, grant a hearing to the applicant at the applicant's request. (May 20, 1948, 62 Stat. 245, ch. 324, § 6; 1973 Ed., § 35-1506; Mar. 21, 1995, D.C. Law 10-233, § 7, 42 DCR 24; Apr. 18, 1996, D.C. Law 11-110, § 39, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 40, 44 DCR 1271; \_\_\_\_\_, 1997 D.C. Law 11- (Act 11-524), § 10(t), 44 DCR 1730.)

**Cross references.** — As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1510 and 11-722.

**Effect of amendments.** — D.C. Law 10-233 substituted "(3) proof of its compliance with the service of process provisions of § 35-102" for "(3) the name and address of a resident of the District of Columbia upon whom notices or orders of the Superintendent or process affecting it may be served; and shall notify the Superintendent promptly of any change in the foregoing" in (a).

D.C. Law 11-110 validated a previously made punctuation change in (a).

D.C. Law 11-255 validated a previously made technical correction in (a)(2).

D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 10-233.** — Law 10-233, the "Insurers Service of Process Act of 1994," was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 11-110.** — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Legislative history of Law 11-255.** — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1701.

**Department of Insurance abolished.** — See note to § 35-1701.

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of

1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the

function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121, was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

### **§ 35-1707. Information to be furnished to insured or Commissioner; grievance procedure.**

(a) Every rating organization and every company which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(b) Every rating organization and every company which makes its own rates shall provide within the District reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to revise the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or company fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such company on such request may, within 30 days after written notice of such action, appeal to the Commissioner, who, after a hearing held upon not less than 10 days written notice to the appellant and to such rating organization or company, may affirm or reverse such action.

(c) No company, agent, broker, or rating organization may willfully withhold required information from or give false or misleading information to the Commissioner.

(d) No company, agent, or broker shall fail to furnish to an insured any policy or comparable evidence of insurance to which the insured is entitled. (May 20, 1948, 62 Stat. 246, ch. 324, § 7; 1973 Ed., § 35-1507; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(t), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (D.C. Act 11-524) substituted “Commissioner” for “Superintendent” in (b) and (c).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1701.

**Department of Insurance abolished.** — See note to § 35-1701.

**Failure to furnish policy as grounds for refusal to renew license.** — Where a policy-

writing agent for an insurance company violated the insurance laws by failing to furnish policies or comparable evidence of insurance to which insured persons were entitled, the refusal of the Superintendent of Insurance (now Commissioner of Insurance and Securities) to renew the agent’s license was proper. *Columbia Auto Loan, Inc. v. Jordan*, 196 F.2d 568 (D.C. Cir. 1952).

## § 35-1708. Additional powers and duties of Commissioner.

(a) In addition to any powers hereinbefore expressly enumerated in this chapter, the Commissioner shall have full power and authority, and it shall be his duty, to enforce by regulations made and promulgated by the Council of the District of Columbia, by orders, or otherwise all and singular, the provisions of this chapter, and the full intent thereof. In particular he shall have the authority and power:

(1) To examine all records of companies and rating organizations and to require any or every company, agent, broker, and rating organization to furnish under oath such information as he may deem necessary for the administration of this chapter. The expense of such examination shall be paid by the company or rating organization examined. In lieu of such examination the Commissioner may, in his discretion, accept a report of examination made by any other insurance supervisory authority;

(2) The Council of the District of Columbia shall have the authority and power to make, and the Commissioner shall have the authority and power to enforce, such reasonable orders, rules, and regulations as may be necessary in making this chapter effective, but such orders, rules, and regulations shall not be contrary to or inconsistent with the provisions of this chapter;

(3) To issue an order, after a full hearing to all parties in interest, requiring any group, association, or organization of companies and the members thereof to cease and desist from any unfair or unreasonable practice.

(b) The Commissioner may designate 1 or more rating organizations or other agencies to assist him in gathering statistical data and in making such compilations thereof as may be necessary for the proper administration of this chapter. Such compilations shall be made available, subject to reasonable rules promulgated by the Council of the District of Columbia, to companies and rating organizations.

(c) The Commissioner shall have no authority at any hearing to compel the attendance of witnesses and he shall not be required to adhere to formal rules of pleading or evidence. At the request of a party or parties in interest made prior to any hearing, he shall administer oaths to witnesses and shall permit such party or parties, at the cost and expense of one who so requests, to have made a record of the hearing, which record upon request of such party or parties the Commissioner shall certify. (May 20, 1948, 62 Stat. 246, ch. 324, § 8; 1973 Ed., § 35-1508; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(t), 44 DCR 1730.)



**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1701.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(279) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Department of Insurance abolished.** — See note to § 35-1701.

**Cited in** GEICO v. Montgomery, App. D.C., 465 A.2d 813 (1983).

## § 35-1709. Violations.

Any company, broker, or agent guilty of violating any of the provisions of this chapter or any order, rule, or regulation issued pursuant to this chapter shall be subject to the provisions of §§ 35-1506 and 35-1540, respectively. (May 20, 1948, 62 Stat. 247, ch. 324, § 9; 1973 Ed., § 35-1509.)

## § 35-1710. Judicial proceedings to contest actions of Commissioner.

Any person, firm or corporation aggrieved by any order, ruling, proceeding, or action of the Commissioner may contest the validity of such order, ruling, proceeding, or action in any court of competent jurisdiction by appeal or through any other appropriate proceedings, as provided under § 35-1548. (May 20, 1948, 62 Stat. 247, ch. 324, § 10; 1973 Ed., § 35-1510; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1701.

**Department of Insurance abolished.** — See note to § 35-1701.

## CHAPTER 18. INSURANCE PLACEMENT.

Sec.	Sec.
35-1801. Purposes of chapter.	statements concerning insurability.
35-1802. Definitions.	
35-1803. Industry Placement Facility.	35-1808. Annual reports by Association; additional information.
35-1804. Rules and regulations.	35-1809. Administrative appeals; judicial review.
35-1805. Joint Underwriting Association; establishment; composition; plan of operation; participation by members; board of directors.	35-1810. Assessment of companies for reinsurance reimbursement fund; charge to insured to recover assessment.
35-1806. Supervision and regulation of operations by Mayor.	35-1811. Delegation of functions by Mayor.
35-1807. Immunity from liability in regard to	

### § 35-1801. Purposes of chapter.

The purposes of this chapter are:

- (1) To assure stability in the property insurance market for property located in the District of Columbia;
- (2) To assure the availability of basic property insurance as defined by this chapter;
- (3) To encourage maximum use, in obtaining basic property insurance, of the normal insurance market provided by authorized insurers; and
- (4) To provide for the equitable distribution among insurers of the responsibility for insuring qualified property in the District of Columbia for which insurance cannot be obtained through the normal insurance market and to authorize the establishment of a joint underwriting association in the District of Columbia to provide for reinsuring of basic property insurance without regard to environmental hazards. (Aug. 1, 1968, 82 Stat. 567, Pub. L. 90-448, title XII, § 1202; 1973 Ed., § 35-1701.)

### § 35-1802. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.
- (2) The term "basic property insurance" means:
  - (A) Insurance against direct loss to property caused by perils as defined and limited in the standard fire policy and extended coverage endorsement thereon, as approved by the Mayor; and
  - (B) Such other insurance (including insurance against the perils of vandalism, malicious mischief, burglary, theft, and robbery) as the Mayor may designate (under regulations adopted or made under § 35-1804) from those lines of property insurance for which reinsurance is available for losses from riots or civil disorders under Part B of Title XII of the National Housing Act.
- (3) The term "environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner.
- (4) The term "inspection bureau" means any rating bureau or other organization designated by the Mayor to perform inspections to determine the condition of the properties for which basic property insurance is sought.

(5) The terms "Industry Placement Facility" and "Facility" mean the facility consisting of all insurers licensed to write and engaged in writing basic property insurance (including homeowners and commercial multiperil policies) within the District of Columbia to assist agents, brokers, and applicants in securing basic property insurance.

(6) The term "premiums written" means gross direct premiums charged with respect to property in the District of Columbia on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, less all premiums and dividends returned, paid, or credited to policyholders or the unused or unabsorbed portions of premiums deposits.

(7) The term "property owner" means any person having an insurable interest in real, personal, or mixed real and personal property. (Aug. 1, 1968, 82 Stat. 568, Pub. L. 90-448, title XII, § 1203; 1973 Ed., § 35-1702.)

**References in text.** — "Part B of Title XII of the National Housing Act," referred to in subparagraph (B) of paragraph (2) of this section, consists of §§ 1221 to 1224, as added by § 1103 of the Act of August 1, 1968, 82 Stat. 560, Pub. L. 90-448, codified at 12 U.S.C. §§ 1749bbb-7 to 1749bbb-10.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — Reorganization Order No. 43, as amended August 12, 1968, delegated to the Superintendent of Insurance the functions vested in the Mayor by this chapter.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department

of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

**Authority of Commissioner to define basic property insurance.** — The Superintendent of Insurance (now Commissioner of Insurance and Securities) has statutory authority to issue an order including "crime lines" within the definition of basic property insurance under this chapter, even though the Secretary of Housing and Urban Development has not incorporated those lines into the definition of essential property insurance under the national insurance development programs, but such authority is qualified by substantive constitutional requirements of due process. *District of Columbia Ins. Placement Facility v. Washington, App. D.C., 269 A.2d 45 (1970).*



**§ 35-1803. Industry Placement Facility.**

(a) Within 30 days after August 1, 1968, all insurers licensed to write and engaged in writing in the District of Columbia, on a direct basis, basic property insurance or any component thereof in multiperil policies shall establish an Industry Placement Facility. The Facility shall formulate and administer a program, subject to disapproval by the Mayor in whole or in part, to seek the equitable apportionment amount such insurers of basic property insurance which may be afforded applicants in the District of Columbia whose property is insurable in accordance with reasonable underwriting standards and who individually or through their insurance agent or broker request the aid of the Facility to procure such insurance. The Facility shall seek to place insurance with 1 or more participating companies up to the full insurable value of the risk, if requested, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability.

(b) The Facility may, subject to the approval of the Mayor, provide as part of its program for the equitable distribution of commercial risks and dwelling risks among insurers.

(c) Each insurer licensed to write and engaged in writing in the District of Columbia, on a direct basis, basic property insurance or any component thereof in multiperil policies shall participate in the Industry Placement Facility program in accordance with the established rules of the program as a condition of its authority to transact such kinds of insurance in the District of Columbia, except that, in lieu of revoking or suspending the certificate of authority of any company for any failure to comply with any of the established rules of the program, the Mayor may subject such company to a penalty of not more than \$200 for each such failure to so comply when in his judgment he finds that the public interest would be best served by the continued operation of the company in the District of Columbia. (Aug. 1, 1968, 82 Stat. 568, Pub. L. 90-448, title XII, § 1204; 1973 Ed., § 35-1703.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C.

Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

**Failure to give facility notice is denial of due process.** — Failure to give Insurance Placement Facility notice or opportunity for hearing relating to an order defining basic property insurance is a denial of due process. *District of Columbia Ins. Placement Facility v. Washington, App. D.C.*, 269 A.2d 45 (1970).

**§ 35-1804. Rules and regulations.**

(a) The Industry Placement Facility shall on its own motion, or within 30 days after a request by the Mayor, submit to the Mayor such proposed rules

and regulations applicable to insurers, agents, and brokers deemed necessary to assure all property owners fair access to basic property insurance through the normal insurance markets, including rules and regulations concerning:

- (1) The manner and scope of inspections of risk by an inspection bureau;
- (2) The preparation and filing of inspection reports and reports on actions taken in connection with inspected risks, and summaries thereof; and
- (3) The operation of the Facility, including rules and regulations concerning:

(A) The basic property insurance coverages to be provided through the Facility;

(B) The reasonable effort to obtain insurance in the normal commercial market required of an applicant before recourse to the Facility; and

(C) The appeals procedure within the Facility for any applicant for insurance regarding any ruling, action, or decision by or on behalf of the Facility.

(b) The Mayor may adopt such of the rules and regulations submitted pursuant to subsection (a) of this section as he approves. If the Mayor disapproves any proposed rule or regulation submitted, he shall state the reasons for so doing, and he shall require the Facility to submit a revision thereof within such time as he may designate, but not less than 10 days. During such designated time, the Mayor and the Facility shall consult regarding any such disapproved rule or regulation. If the Facility fails to submit a proposed rule or regulation, or revision thereof, within the designated time, or if a revised rule or regulation is unacceptable to the Mayor, the Mayor may make such rules and regulations covering the proposed general subject matter as he shall deem necessary to carry out the purposes of this chapter. Any rule or regulation adopted or made under this section shall be consistent with the requirements of Part A of Title XII of the National Housing Act. (Aug. 1, 1968, 82 Stat. 569, Pub. L. 90-448, title XII, § 1205; 1973 Ed., § 35-1704.)

**Section references.** — This section is referred to in § 35-1802.

**References in text.** — “Part A of Title XII of the National Housing Act,” referred to at the end of subsection (b), consists of §§ 1211 to 1214, as added by § 1103 of the Act of August 1, 1968, 82 Stat. 558, Pub. L. 90-448, codified at 12 U.S.C. §§ 1749bbb-7 to 1749bbb-10.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C.

Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

**Section does not prevent Commissioner from expanding insurance coverage.** — The provision in subsection (b) of this section that the Superintendent (now Commissioner) may not adopt procedures conflicting with minimum administrative procedures for the operation of the fair plans, as contained in the National Housing Act, is not to be construed as preventing the Superintendent (now Commissioner) from proceeding toward an expansion of insurance coverage as provided in this chapter. *District of Columbia Ins. Placement Facility v. Washington*, App. D.C., 269 A.2d 45 (1970).

**Authority of Commissioner to define basic property insurance.** — The Superintendent (now Commissioner) has statutory authority to issue an order including “crime lines”

within the definition of basic property insurance under this chapter, even though the Secretary of Housing and Urban Development has not incorporated those lines into the definition of essential property insurance under the national insurance development program. *District of Columbia Ins. Placement Facility v. Washington*, App. D.C., 269 A.2d 45 (1970).

**District regulation prohibiting geographic discrimination invalid.** — A District of Columbia regulation generally preclud-

ing an insurance company from considering geographic location in determining whether to insure or continue to insure risks in the District, with respect to basic property insurance conflicted with and was preempted by this chapter. *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323 (D.C. Cir. 1973).

**Cited in** *Firemen's Ins. Co. v. Washington*, 333 F. Supp. 951 (D.D.C. 1971), *aff'd in part and rev'd in part*, 483 F.2d 1323 (D.C. Cir. 1973).

## § 35-1805. Joint Underwriting Association; establishment; composition; plan of operation; participation by members; board of directors.

(a) The Mayor is authorized to establish by order a Joint Underwriting Association if he finds, after notice and hearing, that such Association is necessary to carry out the purposes of this chapter. Such Joint Underwriting Association shall consist of all insurers licensed to write and engaged in writing in the District of Columbia, on a direct basis, such basic property insurance as may be designated by the Mayor or any component thereof in multiperil policies.

(b) Every such insurer shall be and remain a member of the Association and shall comply with all requirements of membership as a condition of its authority to transact such kinds of insurance in the District of Columbia, except that in lieu of revoking or suspending the certificate of authority of any company for any failure to comply with any of the requirements of membership, the Mayor may subject such company to a penalty of not more than \$200 for each such failure to so comply when in his judgment he finds that the public interest would be best served by the continued operation of the company in the District of Columbia.

(c)(1) Within 60 days following the effective date of the order of the Mayor under this section the Association shall submit to him a proposed plan of operation, consistent with the provisions of this chapter, which shall provide for economical, fair, and nondiscriminatory administration of the Association and for the prompt and efficient provision of reinsurance, without regard to environmental hazards, for such basic property insurance as may be designated by the Mayor. The plan of operation shall include provisions for:

(A) Preliminary assessment of all members for initial expenses necessary to commence operations;

(B) Establishment of necessary facilities;

(C) Management and operation of the Association;

(D) Assessment of members to defray losses and expenses;

(E) Commission arrangements;

(F) Reasonable underwriting standards;

(G) Assumption and cessation of reinsurance; and

(H) Such other matters as the Mayor may designate.

(2) The plan of operation shall not take effect until approved by the Mayor. If the Mayor disapproves the proposed plan of operation (or any part



thereof), he shall state the reasons for so doing, and the Association shall within 30 days thereafter submit for his review an appropriately revised plan of operation. During such time, the Mayor and the Association shall consult regarding the disapproved plan or part thereof. If the Association fails to submit a revised plan of operation, or if the revised plan so submitted is unacceptable to the Mayor, the Mayor shall promulgate a plan of operation.

(3) The Association may, on its own initiative, amend such plan, subject to approval by the Mayor, and shall amend such plan at the direction of the Mayor if he finds such action is necessary to carry out the purposes of this chapter.

(d) All members of the Association shall participate in its writings, expenses, profits, and losses, or in such categories thereof as may be separately established by the Association, subject to approval by the Mayor, in the proportion that the premiums written by each such member during the preceding calendar year bear to the aggregate premiums written in the District of Columbia by all members of the Association, or in accordance with such other formula as the Association may devise with the approval of the Mayor. Such participation by each insurer in the Association shall be determined annually on the basis of such premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the insurer with the Mayor.

(e) The Association shall be governed by a board of 11 directors, elected annually by cumulative voting by the members of the Association, whose votes in such election shall be weighted in accordance with the proportionate amount of each member's net direct premiums written in the District of Columbia during the preceding calendar year. The 1st board shall be elected at a meeting of the members or their authorized representatives, which shall be held within 30 days after the effective date of the order under this section establishing the Association, at a time and place designated by the Mayor. (Aug. 1, 1968, 82 Stat. 569, Pub. L. 90-448, title XII, § 1206; 1973 Ed., § 35-1705.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

## § 35-1806. Supervision and regulation of operations by Mayor.

The operation of any inspection bureau, the Industry Placement Facility, and the Joint Underwriting Association shall at all times be subject to the supervision and regulation of the Mayor. The Mayor shall have the power of visitation of and examination into such operations and free access to all the

books, records, files, papers, and documents that relate to such operations, may summon and qualify witnesses under oath, and may examine directors, officers, agents, employees or any other person having knowledge of such operations. (Aug. 1, 1968, 82 Stat. 571, Pub. L. 90-448, title XII, § 1207; 1973 Ed., § 35-1706.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

## § 35-1807. Immunity from liability in regard to statements concerning insurability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, insurers, any inspection bureau, the Industry Placement Facility, the Joint Underwriting Association, the agents or employees of such bureau, Facility, or Association, or any officer or employee of the District of Columbia, for any statements made in good faith by them concerning the insurability of property: (1) in any reports or other communications; (2) at the time of the hearings conducted in connection therewith; or (3) in the findings with respect thereto required by the provisions of this chapter. The reports and communications of any inspection bureau, the Industry Placement Facility, and the Joint Underwriting Association with respect to individual properties shall not be open to inspection by, or otherwise available to, the public. (Aug. 1, 1968, 82 Stat. 571, Pub. L. 90-448, title XII, § 1208; 1973 Ed., § 35-1707.)

## § 35-1808. Annual reports by Association; additional information.

The Joint Underwriting Association shall file with the Mayor, annually on or before the 1st day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed by the Mayor and shall be in such form as is approved by him. The Mayor may at any time require the Association to furnish him with additional information with respect to its transactions, condition, or any matter connected therewith which he considers to be material and which will assist him in evaluating the scope, operation, and experience of the Association. (Aug. 1, 1968, 82 Stat. 571, Pub. L. 90-448, title XII, § 1209; 1973 Ed., § 35-1708.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

## § 35-1809. Administrative appeals; judicial review.

(a) Any applicant for insurance and any affected insurer may appeal to the Mayor within 90 days after any final ruling, action, or decision by or on behalf of any inspection bureau, the Industry Placement Facility, or the Joint Underwriting Association, following exhaustion of remedies available within such bureau, Facility, or Association.

(b) All final orders or decisions of the Mayor made under this chapter shall be subject to review by the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act. (Aug. 1, 1968, 82 Stat. 571, Pub. L. 90-448, title XII, § 1210; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(d); 1973 Ed., § 35-1709.)

**References in text.** — The “District of Columbia Administrative Procedure Act,” referred to in Subsection (b) of this section, in the Act of October 21, 1968, 82 Stat. 1203, Pub. L. 90-614, codified as subchapter I of Chapter 15 of Title 1.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

## § 35-1810. Assessment of companies for reinsurance reimbursement fund; charge to insured to recover assessment.

(a) In order to carry out the purposes of this chapter and to make available to insurers who participate hereunder the reinsurance afforded under Part B of Title XII of the National Housing Act against losses to property resulting from riots or civil disorders, the Mayor is authorized to assess each insurance company authorized to do business in the District of Columbia an amount, in the proportion that the premiums earned by each such company in the District of Columbia, on lines reinsured in the District of Columbia by the Secretary of Housing and Urban Development, during the preceding calendar year bear to the aggregate premiums earned on those lines in the District of Columbia by all insurance companies, sufficient to provide a fund to reimburse the Secretary of Housing and Urban Development in the manner set forth in § 1223(a)(1) of such Part B. Such fund may be added to or such fund may be created by moneys appropriated therefor by the Congress.



(b) Insurers shall add to the premium rate an amount, to be approved by the Mayor, sufficient to recover, within not more than 3 years, any amounts assessed under subsection (a) of this section during the preceding calendar year. Such amount shall be a separate charge to the insured in addition to the premium to be paid and shall be reflected as such in the policy of insurance. No commission shall be paid thereon to any agent or broker producing or selling the policy of insurance wherein such amount is added. (Aug. 1, 1968, 82 Stat. 572, Pub. L. 90-448, title XII, § 1211; 1973 Ed., § 35-1710.)

**References in text.** — “Part B of Title XII of the National Housing Act,” referred to in subsection (a) of this section, consists of §§ 1221 to 1224, as added by § 1103 of the Act of August 1, 1968, 82 Stat. 560, Pub. L. 90-448, codified at 12 U.S.C. §§ 1749bbb-7 to 1749bbb-10.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

## § 35-1811. Delegation of functions by Mayor.

The Mayor is authorized to delegate any of the functions vested in him by this chapter. (Aug. 1, 1968, 82 Stat. 572, Pub. L. 90-448, title XII, § 1212; 1973 Ed., § 35-1711.)

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — See note to § 35-1802.

**Department of Insurance abolished.** — See note to § 35-1802.

## CHAPTER 19. INSURANCE GUARANTY ASSOCIATION.

Sec.

35-1901 to 35-1917. [Repealed].

**§§ 35-1901 to 35-1917. Purposes of chapter; applicability of chapter; definitions; creation; composition; performance of functions; exercise of powers; organization; board of directors; powers and duties of Association; plan of operation; notice of claims against insurers; powers and duties of Mayor; effect of paid claims; nonduplication of recovery; detection and prevention of insolvencies; examination and regulation of Association; exemption from fees and taxes; policy rates and premiums; immunity from liability; proceedings involving insolvent insurers; re-opening default judgments; termination of operations and accounts; expiration of chapter.**

Repealed. Oct. 21, 1993, D.C. Law 10-51, § 17, 40 DCR 6120.

**Legislative history of Law 10-51.** — Law 10-51, the “Property and Liability Insurance Guaranty Association Act of 1993,” was introduced in Council and assigned Bill No. 10-134, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-96 and transmitted to both Houses of Congress for its review. D.C. Law 10-51 became effective on October 21, 1993.

CHAPTER 19A. LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

Sec.

- 35-1941. Definitions.
- 35-1942. Coverage and limitations.
- 35-1943. Creation of the Association.
- 35-1944. Board of Directors.
- 35-1945. Powers and duties of the Association.
- 35-1946. Assessments.
- 35-1947. Plan of operation.
- 35-1948. Duties and powers of the Mayor.
- 35-1949. Prevention of insolvencies.
- 35-1950. Credits for assessments paid.

Sec.

- 35-1951. Miscellaneous.
- 35-1952. Examination of the Association; annual report.
- 35-1953. Tax exemptions.
- 35-1954. Immunity.
- 35-1955. Stay of proceedings; reopening default judgments.
- 35-1956. Prohibited advertisement of Association act in insurance sale; notice to policyholders.

§ 35-1941. Definitions.

For the purposes of this chapter, the term:

- (1) "Account" means either of the 2 accounts created under § 35-1943.
- (2) "Association" means the District of Columbia Life and Health Insurance Guaranty Association created under § 35-1943.
- (3) "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under § 35-1942.
- (4) "Covered policy" means any policy, contract or group certificate within the scope of § 35-1942.
- (5) "Impaired insurer" means a member insurer which, after July 22, 1992, is not an insolvent insurer, and (A) is deemed by the Mayor to be potentially unable to fulfill its contractual obligations, or (B) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- (6) "Insolvent insurer" means a member insurer which, after July 22, 1992, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
- (7) "Mayor" means the Mayor of the District of Columbia or the Mayor's designee.
- (8) "Member insurer" means any insurer licensed or holding a certificate of authority in the District of Columbia to sell any kind of insurance for which coverage is provided under § 35-1942. The term "member insurer" shall include Group Hospitalization and Medical Services, Inc., as well as any insurer whose license or certificate of authority in the District of Columbia may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
  - (A) A nonprofit hospital or medical service organization;
  - (B) A health maintenance organization;
  - (C) A fraternal benefit society;
  - (D) A mandatory state pooling plan;
  - (E) A mutual assessment company or any entity that operates on an assessment basis;
  - (F) A risk retention group;
  - (G) An insurance exchange; or
  - (H) Any entity similar to any of the above.



(9) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Services, Inc., or any successor thereto.

(10) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(11) "Premiums" means amounts received on covered policies or contracts, less premiums, considerations, and deposits returned, and less dividends and experience credits. The term "premiums" does not include any amounts received for policies or contracts for which coverage is not provided under § 35-1942(b), except that assessable premiums shall not be reduced on account of § 35-1942(b)(2)(C) relating to interest limitations, and § 35-1942(c)(2) relating to limitations with respect to any 1 individual, any 1 participant, and any 1 contract holder.

(12) "Resident" means any person who resides in the District of Columbia at the time a member insurer is determined to be impaired or insolvent and to whom the member insurer owes a contractual obligation. A person may reside in only 1 state, which, in the case of a person other than a natural person, shall be its domiciliary jurisdiction.

(13) "Commissioner" means the Commissioner of Insurance and Securities.

(14) "Supplemental contract" means any agreement entered into for the distribution of policy or proceeds. (July 22, 1992, D.C. Law 9-129, § 2, 39 DCR 4036; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(u), 44 DCR 1730.)

**Section references.** — This section is referred to in § 1-359.1.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) rewrote (13).

**Legislative history of Law 9-129.** — Law 9-129, the "Life and Health Insurance Guaranty Association Act of 1992," was introduced in Council and assigned Bill No. 9-186, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-214 and transmitted to both Houses of Congress for its review. D.C. Law 9-129 became effective on July 22, 1992.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department

of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11- (Act 11-524) is projected to become law on May 22, 1997.

**Delegation of Authority Under D.C. Law 9-129, the Life and Health Insurance Guaranty Association Act of 1992.** — See Mayor's Order 92-120, October 13, 1992.

## § 35-1942. Coverage and limitations.

(a) Coverage shall be provided for the policies and contracts issued to:

(1) Persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under paragraph (2) of this subsection; and

(2) Persons who are owners of, or certificate holders under, such policies or contracts, and who:

(A) Are residents; or

(B) Are not residents, subject to the following conditions:

(i) The insurers which issued and delivered the policies or contracts are domiciled in the District of Columbia;

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside; and

(iii) The states have associations similar to the Association created by this chapter and are not eligible for coverage by the associations.

(b)(1) Coverage shall be provided to the persons specified in subsection (a) of this section for direct, non-group life, health, annuity, and supplemental policies or contracts, and for certificates under direct group policies or contracts, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include, but are not limited to, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(2) Coverage shall not be provided for:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the holder of the policy, contract, or certificate;

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued and delivered;

(C) Any portion of a policy, contract, or certificate if the rate of interest on which it is based:

(i) Averaged over the 4-year period prior to the date on which the Association becomes obligated with respect to the policy, contract, or certificate, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for that same 4-year period or for a lesser period if the policy, contract, or certificate was issued and delivered less than 4 years before the Association became obligated; and

(ii) On and after the date on which the Association becomes obligated with respect to the policy, contract, or certificate, exceeds the rate of interest determined by subtracting 3 percentage points from the most recent Moody's Corporate Bond Yield Average;

(D) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under:

(i) A Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1144), as amended;

(ii) A minimum premium group insurance plan;

(iii) A stop-loss group insurance plan; or

(iv) An administrative services only contract;

(E) Any portion of a policy, contract, or certificate to the extent that it provides dividends or experience rating credits, or provides that any fees or

allowances be paid to any person, including the policy, contract, or certificate holder, in connection with the service to or administration of the policy, contract, or certificate;

(F) Any policy, contract, or certificate issued and delivered in the District of Columbia by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue and deliver the policy, contract, or certificates in the District of Columbia; or

(G) Any unallocated annuity contract.

(c) The benefits for which the Association may become liable shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2)(A) With respect to any 1 life, regardless of the number of policies, contracts, or certificates:

(i) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) \$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values; or

(iii) \$300,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) The liability of the Association shall be limited strictly by the express terms of the policies or contracts and by this chapter, and shall not be affected by the contents of any brochures, illustrations, advertisements in print or electronic media, or other advertising material used in connection with the sale of the policies or contracts, or by oral statements made by agents or other sales representatives in connection with the sale of the policies or contracts. The Association shall not be liable for extra-contractual damages, punitive damages, attorney fees, or interest other than as provided for by the terms of the policies or contracts as limited by this chapter, that might be awarded by any court or governmental agency in connection with the policies or contracts.

(d) In no event shall the Association be liable to expend more than \$300,000 in the aggregate with respect to any 1 individual. (July 22, 1992, D.C. Law 9-129, § 3, 39 DCR 4036.)

**Section references.** — This section is referred to in §§ 35-1941, 35-1945, and 35-1956.

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1943. Creation of the Association.

(a)(1) There is created a nonprofit legal entity to be known as the District of Columbia Life and Health Insurance Guaranty Association.

(2) All member insurers shall be and shall continually remain members of the Association as a condition of their authority to transact insurance business in the District of Columbia.



(3) The Association shall perform its functions under the plan of operation established and approved under § 35-1947 and shall exercise its powers through a board of directors established under § 35-1944.

(4) For purposes of administration and assessment the Association shall maintain 2 accounts:

(A) The life insurance and annuity account which shall include the following subaccounts:

(i) Life insurance account; and

(ii) Annuity account; and

(B) The health insurance account.

(b) The Association shall come under the immediate supervision of the Mayor and shall be subject to the applicable provisions of the insurance laws of the District of Columbia. (July 22, 1992, D.C. Law 9-129, § 4, 39 DCR 4036.)

**Section references.** — This section is referred to in § 35-1941.

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1944. Board of Directors.

(a)(1) The Board of Directors of the Association (“Board” or “Board of Directors”) shall consist of no less than 5 and no more than 9 member insurers serving terms as established in the plan of operation.

(2) The members of the Board shall be selected by member insurers subject to the approval of the Mayor.

(3) Vacancies on the Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members, subject to the approval of the Mayor.

(b) The Mayor shall give notice to all member insurers of the time and place of the organizational meeting to select the initial Board of Directors, and to initially organize the Association.

(c) In determining voting rights at the organizational meeting, each member insurer shall be entitled to 1 vote in person or by proxy.

(d) If the Board of Directors is not selected within 60 days after notice of the organizational meeting, the Mayor may appoint the initial members.

(e) In approving selections or in appointing members to the Board, the Mayor shall consider, among other things, whether all member insurers are fairly represented.

(f) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors, but shall not otherwise be compensated by the Association for their services. (July 22, 1992, D.C. Law 9-129, § 5, 39 DCR 4036.)

**Section references.** — This section is referred to in §§ 35-1943, and 35-1947.

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1945. Powers and duties of the Association.

(a) If a member insurer is an impaired domestic insurer, the Association may, in its discretion and subject to any conditions imposed by the Association

that do not impair the contractual obligations of the impaired insurer that are approved by the Mayor, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies, contracts, or certificates of the impaired insurer;

(2) Provide monies, pledges, notes, guarantees, or other proper means to effectuate paragraph (1) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1) of this subsection; or

(3) Loan money to the impaired insurer.

(b)(1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2) of this subsection, the Association shall, in its discretion, either:

(A) Take any of the actions specified in subsection (a) of this section, subject to the conditions therein; or

(B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for them under claims of emergency or hardship in accordance with standards proposed by the Association and approved by the Mayor.

(2) The Association shall be subject to the requirements of paragraph (1) of this subsection only:

(A) If the laws of the member insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligation by all guaranty associations, along with all expenses and interest on all payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(i) The delinquency proceeding shall not be dismissed;

(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and

(iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and

(B) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in the District of Columbia; or

(C) If the impaired insurer is a foreign or alien insurer:

(i) It has been prohibited from soliciting or accepting new business in the District of Columbia;

(ii) Its certificate of authority has been suspended or revoked in the District of Columbia; and

(iii) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of insurance of the state.

(c) If a member insurer is an insolvent insurer, the Association shall, in its discretion:

(1)(A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies, contracts, and certificates of the insolvent insurer;

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(C) Provide the monies, pledges, guarantees, or other means as are reasonably necessary to discharge the duties; or

(2) With respect only to life and health insurance policies and certificates, provide benefits and coverages in accordance with subsection (d) of this section.

(d) When proceeding under subsection (b)(1)(B) or (c)(2) of this section, the Association shall, with respect only to life and health insurance policies and certificates:

(1) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims insured. The payment of benefits required by this paragraph shall be made:

(A) With respect to group policies, not later than the earlier of the next renewal date under the policies or 45 days, but in no event less than 30 days after the date on which the Association becomes obligated with respect to the policies; or

(B) With respect to individual policies, not later than the earlier of the next renewal date, if any, under the policies or 1 year, but in no event less than 30 days from the date on which the Association becomes obligated with respect to the policies;

(2) Make diligent efforts to provide all known insureds group policy and certificate holders with respect to group policies 30-days notice of the termination of the benefits provided; and

(3) Make available, with respect to individual policies, to each known insured, or owner if other than the insured; with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subsection (e) of this section, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(e)(1) In providing the substitute coverage required under subsection (d)(3) of this section, the Association may offer to reissue the terminated coverage or to issue an alternative policy.

(2) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policies.

(3) The Association may reinsure any alternative or reissued policy.

(f)(1) Alternative policies adopted by the Association shall be subject to the approval of the Mayor. The Association may adopt alternative policies of



various types for future issuance without regard to any particular impairment or insolvency.

(2) Alternative policies shall contain at least the minimum statutory provisions required in the District of Columbia and provide benefits that shall not be unreasonable in relation to the premium charged. The Association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(3) Alternative policies issued and delivered by the Association shall provide coverage of a type similar to that of the policies issued and delivered by the impaired or insolvent insurer, as determined by the Association.

(g) If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the Association in accordance with the amount of insurance provided and the age and class of risk, subject to prior approval of the Mayor or by a court of competent jurisdiction.

(h) The Association's obligations with respect to coverage under policies of the impaired or insolvent insurer or under any reissued or alternative policies shall cease on the date the policies are replaced by other similar policies by either the policyholder, the insured, or the Association.

(i) When proceeding under subsection (b)(1)(B) or (c) of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the Association shall assure the payment or crediting of a rate of interest consistent with § 35-1942(b)(2)(C).

(j) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the Association's obligations under the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(k) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the Association, and the Association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(l) The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of the District of Columbia by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer, other than the District of Columbia.

(m) In carrying out its duties under subsections (b) and (c) of this section, the Association may, subject to approval by the court:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the Association finds that the amounts which can be assessed under this chapter are less than the amount needed to assure full and prompt performance of the Association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of a permanent policy or contract lien, to be in the public interest; or

(2) Impose temporary moratoriums on liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(n) If the Association fails to act within a reasonable period of time under subsections (b)(1)(B), (c), and (d) of this section, the Mayor shall assume the powers and duties of the Association under this chapter with respect to impaired or insolvent insurers.

(o) The Association may render assistance and advice to the Mayor, upon request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(p) The Association shall have standing to appear before any court in the District of Columbia with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated under this chapter. Standing shall extend to all matters germane to the powers and duties of the Association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The Association shall also have the right to appear before a court in another state with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated or a court with jurisdiction over a 3rd party against whom the Association may have rights through subrogation of the insurer's policyholders.

(q)(1) Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the Association, whether the benefits are payments of, or on account of, contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The Association may require an assignment to it of the rights and causes of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon such a person.

(2) The subrogation rights of the Association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(3) In addition to paragraphs (1) and (2) of this subsection, the Association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to the policy or contracts.

(r) The Association may:

(1) Enter into contracts necessary or proper to carry out the provisions and purposes of this chapter;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under § 35-1946 and to settle claims or potential claims against it;

(3) Borrow money to carry out the purposes of this chapter; any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) Employ or retain persons necessary to handle the financial transactions of the Association, and to perform other functions necessary or proper under this chapter;

(5) Take legal action necessary to avoid payment of improper claims; and

(6) Exercise, for the purposes of this chapter and to the extent approved by the Mayor, the powers of a domestic life or health insurer, but in no case may the Association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter.

(s) The Association may join an organization of 1 or more other state associations of similar purposes to further the purposes and administration of the powers and duties of the Association. (July 22, 1992, D.C. Law 9-129, § 6, 39 DCR 4036.)

**Section references.** — This section is referred to in §§ 35-1946, 35-1947, and 35-1951.

**Legislative history of Law 9-129.** — See note to § 35-1941.

**Editor's notes.** — "Subsection (e) of this section", referred to in (d)(3), was substituted for the language "paragraph (4) of this subsection" which appeared in § 6 of D.C. Law 9-129.

## § 35-1946. Assessments.

(a) The Board of Directors shall assess the member insurers for the amounts necessary to carry out the powers and duties of the Association. Assessments shall be made separately for the life insurance and annuity account and for the health insurance account and shall be maintained in a District of Columbia bank, which is subject to the District of Columbia Community Development Program under the supervision of the District of Columbia Office of Banking and Financial Institutions. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest monthly until paid.

(b) There shall be 2 assessments, as follows:

(1) Class A assessments shall be made for the purposes of meeting administrative and legal costs and other expenses and examinations conducted under the authority of § 35-1949(e). Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under § 35-1945 with regard to an impaired or insolvent insurer.

(c)(1) The amount of any Class A assessment shall be determined by the Board and may be made on a pro rata or non-pro rata basis. If pro rata, the Board may provide that it be credited against future Class B assessments. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the Board in its sole discretion as being fair and reasonable under the circumstances.



(2) Class B assessments against member insurers for each account and subaccount shall be in the same proportion as the premiums received on business in the District of Columbia by each assessed member insurer on policies and contracts covered by each account for the 3 most recent calendar years, for which information is available, preceding the year in which the insurer became impaired or insolvent bears to the premiums received on business in the District of Columbia for these calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this chapter. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d)(1) The Association may abate or defer, in whole or in part, the assessment of a member insurer if the Board concludes that payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.

(2) In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e)(1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any 1 calendar year exceed 2% and for the health account shall not in any 1 calendar year exceed 2% of the insurer's average premiums received in the District of Columbia on the policies and contracts covered by the account during the 3 calendar years preceding the year in which the insurer is declared impaired or insolvent. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any 1 year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(2) The Board may provide in the plan of operation a method of allocating funds among claims, whether relating to 1 or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If a 1% assessment for any subaccount of the life and annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to subsection (c)(2) of this section, the Board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in paragraph (1) of this subsection.

(f)(1) The Board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the Board finds is necessary to carry out, during the coming year,

the obligations of the Association with regard to that account, including assets accruing from assignments, subrogation, net realized gains, and income from investments.

(2) A reasonable amount may be retained in any account in a District of Columbia bank, which is subject to the District of Columbia Community Development Program under the supervision of the District of Columbia Office of Banking and Financial Institutions, to provide funds for the continuing expenses of the Association and for future losses.

(g) It shall be proper for any member insurer, in determining its premium rates and policyholder dividends for any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(h) The Association shall issue to each insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Mayor, for the amount of the assessment so paid. All outstanding certificates shall be of equal value, dignity, and priority without references to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time as the Mayor may approve. (July 22, 1992, D.C. Law 9-129, § 7, 39 DCR 4036.)

**Section references.** — This section is referred to in §§ 35-1945, 35-1947, and 35-1950.

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1947. Plan of operation.

(a)(1) The Association shall submit to the Mayor a plan of operation, and any subsequent amendments that are necessary or suitable, to assure the fair, reasonable, and equitable administration of the Association. The plan of operation, and any amendments, shall become effective 30 days following its submission to the Mayor, unless the Mayor has issued written disapproval of the plan within the 30 days.

(2) If the Association fails to submit a suitable plan of operation within 120 days following July 22, 1992, or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Mayor shall, after notice and hearing, adopt and promulgate reasonable rules as necessary or advisable to carry out the provisions of this chapter. These rules shall continue in force until modified by the Mayor or superseded by a plan submitted by the Association and approved by the Mayor.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation, in addition to requirements enumerated elsewhere in this chapter, shall:

(1) Establish procedures for handling the assets of the Association;

(2) Establish the amount and method of reimbursement of members of the Board of Directors under § 35-1944;

(3) Establish regular places and times for meetings, including telephone conference calls, of the Board of Directors;

(4) Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board of Directors;

(5) Establish the procedures whereby nominations to the Board of Directors will be made and submitted to the Mayor for approval;

(6) Establish any additional procedures necessary for assessments under § 35-1946; and

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

(d)(1) The plan of operation may provide that any or all powers and duties of the Association, except those under § 35-1945(q)(3) and § 35-1946, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this Association, or its equivalent in 2 or more states.

(2) Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for its performance of any function of the Association.

(3) A delegation under this subsection shall take effect only with the approval of the Board of Directors and the Mayor, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. (July 22, 1992, D.C. Law 9-129, § 8, 39 DCR 4036.)

**Section references.** — This section is referred to in § 35-1943.

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1948. Duties and powers of the Mayor.

In addition to the duties and powers enumerated elsewhere in this chapter, the Mayor shall:

(1) Upon request of the Board of Directors, provide the Association with a statement of the premiums in the District of Columbia and any other appropriate states for each member insurer; and

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer to comply promptly with such a demand shall not excuse the Association from the performance of its powers and duties under this chapter. (July 22, 1992, D.C. Law 9-129, § 9, 39 DCR 4036.)

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1949. Prevention of insolvencies.

(a) To aid in the detection and prevention of insurer impairments or insolvencies, the Mayor shall:

(1) Transmit written notices to the insurance commissioners of all the other states and territories of the United States, within 30 days following the date any action is taken, when the Mayor takes any of the following actions against a member insurer:

(A) Revocation of license;



(B) Suspension of license; or

(C) Issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the District of Columbia, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(2) Report to the Board of Directors when the Mayor has taken any of the actions set forth in paragraph (1) of this subsection or has received a report from any insurance commissioner indicating that any similar action has been taken in another state. The report shall contain all significant details of the action taken, or shall include the report received from another insurance commissioner;

(3) Report to the Board of Directors when the Mayor has reasonable cause to believe, from any examination, whether completed or in process, of any member company, that the company may be an impaired or insolvent insurer; and

(4) Furnish to the Board of Directors the ratios developed by the National Association of Insurance Commissioners' Insurance Regulatory Information System, and listings of companies not included in the ratios. The Board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information shall be kept confidential by the Board of Directors until it is made public by the Mayor or other lawful authority.

(b) The Mayor may seek the advice and recommendations of the Board of Directors concerning any matter affecting the Mayor's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in the District of Columbia.

(c) The Board of Directors may, upon majority vote, make reports and recommendations to the Mayor upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer, or germane to the solvency of any company seeking to transact insurance business in the District of Columbia. These reports and recommendations shall be internal working documents, and, consequently, shall not be considered public documents.

(d) It shall be the duty of the Board of Directors, upon majority vote, to notify the Mayor of any information indicating whether any member insurer may be an impaired or insolvent insurer.

(e)(1) The Board of Directors may, upon majority vote, request that the Mayor order an examination of any member insurer which the Board, in good faith, believes may be an impaired or insolvent insurer.

(2) Within 30 days of receipt of such a request, the Mayor shall begin the examination.

(3) The examination may be conducted as a National Association of Insurance Commissioners examination, or may be conducted by persons designated by the Mayor.

(4) The cost of the examination shall be paid by the Association and the examination report shall be treated the same as other examination reports.

(5) In no event shall the examination report be released to the Board of Directors prior to its release to the public, except in compliance with subsection (a) of this section.

(6) The Mayor shall notify the Board of Directors when the examination is completed.

(7) The request for an examination shall be kept on file by the Mayor, but it shall not be open to public inspection prior to the release of the examination report to the public.

(f) The Board of Directors may, upon majority vote, make recommendations to the Mayor for the detection and prevention of insurer insolvencies.

(g) The Board of Directors, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, shall:

(1) Prepare and submit a written report to the Mayor containing all information it possesses bearing on the history and causes of the insolvency; and

(2) Cooperate with the boards of directors of guaranty associations in other states in preparing reports on the history and causes of insolvency of a particular insurer. The Association may adopt by reference any report prepared by other associations. (July 22, 1992, D.C. Law 9-129, § 10, 39 DCR 4036.)

**Section references.** — This section is referred to in § 35-1946.

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1950. Credits for assessments paid.

(a) A member insurer may offset against its premium taxes an assessment described in § 35-1946(h) to the extent of 10% of the amount of the assessment for each of the 10 calendar years following the year in which the assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against the premium taxes for the year it ceases doing business.

(b) Any sums which are acquired by refund, pursuant to § 35-1946(f) from the Association by member insurers, and which theretofore have been offset against premium taxes as provided in subsection (a) of this section, shall be paid by member insurers to the District of Columbia in accordance with requirements of the District of Columbia Department of Finance and Revenue. The Association shall notify the Commissioner that the refunds have been made. (July 22, 1992, D.C. Law 9-129, § 11, 39 DCR 4036; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 9-129.** — See note to § 35-1941.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1941.

## § 35-1951. Miscellaneous.

(a) Nothing in this chapter shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b)(1) Records shall be kept of all negotiations and meetings in which the Association or its representatives are involved in discussing the activities of the Association in carrying out its powers and duties under § 35-1945.

(2) Records of negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction.

(3) Nothing in this subsection shall limit the duty of the Association to render a report of its activities under this section.

(c)(1) For the purpose of carrying out its obligations under this chapter, the Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to § 35-1945(m).

(2) Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter.

(3) For the purposes of this subsection, assets attributable to covered policies are that proportion of the assets which the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contribution of the respective parties, including the Association, the shareholders, and policyholders of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until the total amount of valid claims of the Association, with interest, for funds expended in carrying out its powers and duties under § 35-1945 with respect to the insurer have been fully recovered by the Association.

(e)(1) If an order for liquidation or rehabilitation of an insurer domiciled in the District of Columbia has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during 5 years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (2) through (4) of this subsection.

(2) No distribution shall be recoverable if the insurer shows that, when paid, the distribution was lawful and reasonable, and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.



(3)(A) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he or she received.

(B) Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately.

(C) If 2 or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under paragraph (3) of this subsection is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recoverable from the insolvent affiliate. (July 22, 1992, D.C. Law 9-129, § 12, 39 DCR 4036.)

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1952. Examination of the Association; annual report.

(a) The Association shall be subject to examination and regulation by the Mayor.

(b) The Board of Directors shall submit to the Mayor each year, not later than 120 days after the end of the Association's fiscal year, a financial report in a form approved by the Mayor and a report of its activities during the preceding fiscal year. (July 22, 1992, D.C. Law 9-129, § 13, 39 DCR 4036.)

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1953. Tax exemptions.

The Association shall be exempt from payment of all fees and all taxes levied by the District of Columbia. (July 22, 1992, D.C. Law 9-129, § 14, 39 DCR 4036.)

**Legislative history of Law 9-129.** — See note to § 35-1941.

## § 35-1954. Immunity.

(a) There shall be no liability on the part of, and no cause of action shall arise against, any member insurer or its agents or employees, the Association or its agents or employees, members of the Board of Directors, or the Mayor or the Mayor's representatives, for any action or omission by them in performance of their powers and duties under this chapter, except in the case of willful misconduct, gross negligence, or criminal activity on the part of these persons.

(b) The immunity established by subsection (a) of this section shall extend to the participation in any organization of 1 or more state associations of similar purposes and to any organization and its agents or employees. (July 22, 1992, D.C. Law 9-129, § 15, 39 DCR 4036.)

**Legislative history of Law 9-129.** — See note to § 35-1941.

### **§ 35-1955. Stay of proceedings; reopening default judgments.**

(a) All proceedings in which the insolvent insurer is a party in any court in the District of Columbia shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties.

(b) As to judgment under any decision, order, verdict, or finding based on default, the Association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits. (July 22, 1992, D.C. Law 9-129, § 16, 39 DCR 4036.)

**Legislative history of Law 9-129.** — See note to § 35-1941.

### **§ 35-1956. Prohibited advertisement of Association act in insurance sale; notice to policyholders.**

(a)(1) No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the District of Columbia Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter.

(2) This subsection shall not apply to the Association or any other entity which does not sell or solicit insurance.

(b)(1) Within 180 days of July 22, 1992, the Association shall prepare a summary document describing the general purposes and current limitations of this chapter, which document shall be submitted to the Mayor for approval.

(2) Sixty days after the summary document is approved by the Mayor, no insurer may deliver a policy or contract described in § 35-1942(b)(1) to a policy or contract holder unless the summary document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except as provided in subsection (d) of this section.

(3) The delivery or contents or interpretation of the summary document shall not mean that either the policy or the contract or the holder of either

would be covered in the event of the impairment or insolvency of a member insurer.

(4) The summary document shall be revised by the Association as amendments to this chapter may require.

(5) Failure to receive this document does not give the policy holder, contract holder, certificate holder, or insured any greater rights than the rights stated in this chapter.

(c) The summary document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face. The Mayor shall promulgate rules establishing the form and content of the disclaimer, which at a minimum shall:

(1) State the name and address of the Association and the Commissioner of Insurance and Securities;

(2) Prominently warn the policy or contract holder that the Association may not cover the policy, or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the District of Columbia;

(3) State that the insurer and its agents are prohibited by law from using the existence of the Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(4) Emphasize that the policy or contract holder should not rely on coverage under the Life and Health Insurance Guaranty Association when selecting an insurer; and

(5) Provide additional information as directed by the Mayor.

(d) No insurer or agent may deliver a policy or contract described in § 35-1942(b)(1) and excluded under § 35-1942(b)(2)(A) from coverage under this chapter unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Life and Health Insurance Guaranty Association. The Mayor, by rule, shall specify the form and content of the notice. (July 22, 1992, D.C. Law 9-129, § 17, 39 DCR 4036; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(u), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance" in (c)(1).

**Legislative history of Law 9-129.** — See note to § 35-1941.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-1941.



## CHAPTER 20. HOLDING COMPANY SYSTEM.

Sec.

35-2001 to 35-2015. [Repealed].

**§§ 35-2001 to 35-2015. Definitions; subsidiaries of domestic insurers; acquisition of control of or merger with domestic insurer; registration of insurers; transactions by insurers; examination of insurers; confidential treatment of information and documents of insurers; rules; regulations and orders; violations of chapter — Civil remedies; criminal proceedings; takeover of insurer by Mayor; suspension, revocation, or nonrenewal of insurer's license; judicial remedies of persons aggrieved by actions of Mayor; chapter to supersede other laws; separability.**

Repealed. Oct. 21, 1993, D.C. Law 10-44, § 17, 40 DCR 6027.

**Legislative history of Law 10-44.** — Law 10-44, the "Holding Company System Act of 1993," was introduced in Council and assigned Bill No. 10-132, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 5, 1993, it was assigned Act No. 10-79 and transmitted to both Houses of Congress for its review. D.C. Law 10-44 became effective on October 21, 1993.

CHAPTER 21. COMPULSORY/NO-FAULT MOTOR VEHICLE INSURANCE.

Sec.

35-2101. Findings; purpose.

35-2102. Definitions.

35-2103. Required insurance.

35-2104. Personal injury protection.

35-2105. Lawsuit restriction and opportunity for arbitration under optional insurance.

35-2106. Availability of required and optional insurance and benefits.

Sec.

35-2107. Priorities for the payment of personal injury protection benefits.

35-2108. [Repealed].

35-2109. Consumer protection.

35-2110. Special provisions.

35-2111. Miscellaneous provisions.

35-2112. [Expired.]

35-2113. Penalties; adjudications.

35-2114. Uninsured Motorist Fund.

§ 35-2101. Findings; purpose.

(a) *Findings.* — The Council of the District of Columbia finds that:

(1) Motorists, motor vehicle passengers, and pedestrians in the District are not adequately protected, by current law and practice, from the consequences of motor vehicle accidents.

(2) If a person suffers personal injuries because of an accident involving a motor vehicle in the District, he or she is unlikely to recover the amount of his or her actual losses because:

(A) Approximately 50% of the victims do not satisfy the prerequisites to compensation under the present law;

(B) Approximately 40% of the operators in the District do not maintain any motor vehicle insurance or have other financial resources sufficient to pay losses;

(C) The average motor vehicle insurance policy in the District will pay only up to \$10,000 for the personal injuries of any 1 victim, a sum that is insufficient to compensate adequately a victim with serious injuries; and

(D) Satisfaction of the prerequisites to compensation under the present law is time-consuming and expensive to policyholders because a victim must establish that the accident was the fault of another person; that the person injured was free from contributory fault; and that the injuries suffered were the natural and probable consequences of the accident.

(3) Far greater protection to victims of motor vehicle accidents is available at a lower price than that afforded for coverage currently available.

(4) The purchase of this better insurance protection should be compulsory because of the great potential of a motor vehicle to cause personal injury.

(b) *Purpose.* — It is the purpose of this chapter to provide adequate protection for victims who are injured in the District or who are injured while riding in motor vehicles registered or operated in the District. (Sept. 18, 1982, D.C. Law 4-155, § 2, 29 DCR 3491.)

**Legislative history of Law 4-155.** — Law 4-155, the "Compulsory/No-Fault Motor Vehicle Insurance Act of 1982," was introduced in Council and assigned Bill No. 4-140, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first, amended first, second amended first, and

second readings on May 11, 1982, May 25, 1982, June 8, 1982, and June 22, 1982, respectively. Deemed approved without Mayoral signature upon expiration of the Mayoral review period on July 22, 1982, it was assigned Act No. 4-226 and transmitted to both Houses of Congress for its review.

**Delegation of authority pursuant to Law 6-96.** — See Mayor's Order 86-186, October 17, 1986.

**Applicability of 1986 amendments to chapter.** — Since the 1986 amendments to this chapter did not apply until June 2, 1986, accident which took place on April 4, 1986 was governed by the unamended No-Fault Act of 1982. *Walker v. District of Columbia*, App. D.C., 656 A.2d 722 (1995).

**Prerequisite to recovery.** — For purposes of recovery under this act it is sufficient if the uninsured vehicle can be shown to be the cause of the accident. *Maddox v. Doe*, 122 WLR 69 (Super. Ct. 1993).

**Preliminary finding that accident itself caused injury.** — Nothing in this chapter or in its legislative history demonstrates a legislative intent to compensate a victim without a preliminary finding that the accident, itself, caused the injury in question. *Edmonds v. Stonewall/Dixie Ins. Co.*, 114 WLR 961 (Super. Ct. 1986).

**Constitutionality of former restriction on recovery of noneconomic losses.** — The classification formerly drawn by § 35-2105 (b)(6), which had restricted a victim's right to bring a tort suit to recover noneconomic losses unless the victim had incurred \$5,000 or more in medical expenses, bore a rational relationship to a legitimate governmental purpose and must be sustained under the equal protection principles embodied in the Fifth Amendment due process clause. *Dimond v. District of Columbia*, 792 F.2d 179 (D.C. Cir. 1986).

**Purpose of no-fault vehicle insurance.** — The No-Fault Act established a compulsory insurance system for personal injury in which victims of automobile accidents would be compensated irrespective of fault. *Smith v. Washington Metro. Area Transit Auth.*, App. D.C., 631 A.2d 387 (1993).

**Application of amendments on recovery for noneconomic loss.** — The 1982 No-Fault Insurance Act as it existed prior to the amendments which became effective on March 4, 1986, still governs the ability to bring tort suits for noneconomic loss arising from accidents occurring before the amendments took effect; because the amendments are not retroactive, they do not give victims the ability to recover for noneconomic loss stemming from accidents occurring before the amendments became effective. *Dimond v. District of Columbia*, 792 F.2d 179 (D.C. Cir. 1986).

**Exclusive remedy provisions.** — The exclusive remedy provisions of the Workers' Compensation Act do not bar an employee from seeking uninsured motorist benefits from his

employer. *Holmes v. Washington Metro. Area Transit Auth.*, 731 F. Supp. 1115 (D.D.C. 1990).

**Reduction of policy limits.** — An insurance carrier could draft a contract which provided for a reduction of the policy limit by any amount received in compensation for the injuries inflicted by an uninsured motorist, including worker's compensation. *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991).

Where an insurer provides for a reduction of the policy limit by any amount received as compensation for injuries, if such a contract fails to provide the mandatory minimum amount of coverage required of the insurer by the No-Fault Act because of such a reduction, the contract must yield to the statute, and the court may not enforce the contract to the extent that it violates the governing law. *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991).

**Burden of proof not met.** — Because plaintiff failed to make a prima facie showing that she suffered substantial permanent impairment or was virtually incapacitated for 180 continuous days after her accident, she did not meet her burden of proving that her injury rose to the necessary level of seriousness required by the no-fault statute, and the trial court's grant of summary judgment was thus appropriate. *Smith v. Washington Metro. Area Transit Auth.*, App. D.C., 631 A.2d 387 (1993).

**Cited in** *Johnson v. Cumis Ins. Soc'y, Inc.*, 624 F. Supp. 1170 (D.D.C. 1986); *Johnson v. Collins*, App. D.C., 516 A.2d 196 (1986); *Weeks v. Wimple*, 669 F. Supp. 499 (D.D.C. 1987); *Tapscott v. Dairyland Ins. Co.*, 673 F. Supp. 611 (D.D.C. 1987); *Taylor v. Canady*, App. D.C., 536 A.2d 93 (1988); *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988); *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989); *Stackhouse v. Schneider*, App. D.C., 559 A.2d 306 (1989); *Lee v. District of Columbia*, App. D.C., 559 A.2d 308 (1989); *Davis v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 561 A.2d 169 (1989); *Adam A. Weschler & Son v. Klank*, App. D.C., 561 A.2d 1003 (1989); *Dove v. Dairyland Ins. Co.*, App. D.C., 562 A.2d 1199 (1989); *Colonial Penn Ins. Co. v. Owens*, 728 F. Supp. 798 (D.D.C. 1990); *Coates v. Washington Metro. Area Transit Auth.*, 742 F. Supp. 10 (D.D.C. 1990); *In re Banks*, App. D.C., 577 A.2d 316 (1990); *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 616 A.2d 1264 (1992); *State Farm Mut. Auto. Ins. Co. v. Smalls*, 121 WLR 117 (Super. Ct. 1992); *Messina v. Nationwide Mut. Ins. Co.*, 998 F.2d 2 (D.C. Cir. 1993); *Smalls v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).



**§ 35-2102. Definitions.**

As used in this chapter:

(1) The term “accident” means an untoward and unforeseen occurrence arising out of the maintenance or use of:

(A) A motor vehicle;

(B) A vehicle operated or designed for operation upon a highway by power other than muscular power with respect only to any pedestrian or any occupant of that vehicle other than the owner or operator of that vehicle; or

(C) Any other vehicle covered by the insurance coverages required by § 35-2106.

(2) The term “Administration Fund” means the fund established by § 35-2108.

(3) The term “beneficiary” means a person who is named in a policy of personal injury protection insurance as a person who is entitled to the benefits of personal injury protection insurance.

(4) The term “Department” means the District of Columbia Department of Transportation, established by Reorganization Plan No. 2 of 1975.

(5) The term “Director” means the Director of the Department or the Director’s designee.

(6) The term “District” means the District of Columbia.

(7) The term “highway” means the entire width between the boundary lines of every publicly maintained way, when any part thereof is open to the use of the public for purposes of vehicular or pedestrian travel.

(8) The term “individual” means a natural person.

(9) The term “injury” means bodily harm to an individual that is sustained in an accident, and any illness, disease, or death resulting from that bodily harm.

(10) The term “insured” means a named insured or any other person insured in an insurance policy, with the exception of those persons specifically excluded by endorsement on the insurance policy.

(11) The term “insurer” means any person, company, or professional association licensed in the District of Columbia that provides motor vehicle liability protection or any self-insurer.

(12) The term “license” means a license or permit to operate a motor vehicle issued under the laws of the District.

The term “license” includes a driver’s license; a temporary or learner’s permit; the privilege of any person to drive a motor vehicle whether or not such person holds a valid license issued by the District government; the privilege conferred upon a nonresident by the laws of the District pertaining to the operation by a nonresident of a motor vehicle; or any other license issued under authority delegated to the Director.

(13) The term “loss” means economic detriment incurred as a result of an accident resulting in injury, consisting of and limited to medical and rehabilitation expenses, work loss inclusive of replacement services loss, and death benefits. The term “loss” does not include noneconomic loss.

(14) The term “maintenance or use” with respect to a motor vehicle means any activity involving or related to the operation of or transportation by a

motor vehicle, including occupying, entering into, alighting from, repairing, or servicing.

The term “maintenance or use” does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct is off the business premises or unless it is conduct in the course of loading or unloading a motor vehicle.

(15) The term “Mayor” means the Mayor of the District of Columbia or the Mayor’s designee.

(16) The term “motorcycle” means any motor vehicle having either a tandem arrangement of 2 wheels or a tricyclic arrangement of 3 wheels and having a seat or saddle for the use of the operator. The term “motorcycle” does not include a tractor.

(17) The term “motor vehicle” means any device propelled by an internal-combustion engine, electricity, or steam. The term “motor vehicle” does not include traction engines used exclusively for drawing vehicles in fields, road rollers, vehicles propelled only upon rails and tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(18) The term “named insured” means the person identified in the declaration of the insurance policy.

(19) The term “noneconomic loss” means pain, suffering, inconvenience, physical or mental impairment, and other nonpecuniary damage recoverable under the tort law applicable to injury arising out of the maintenance or use of a motor vehicle.

(20) The term “operator” means a person who drives or is in actual physical control of a motor vehicle or who is exercising control over or steering a motor vehicle being pushed or towed by a motor vehicle.

(21) The term “owner” means any person, corporation, firm, agency, association, organization, or federal, state, or local government agency or other authority or other entity having the property or title to a vehicle or bicycle used or operated in the District; any registrant of a vehicle used or operated in the District; or any person, corporation, firm, agency, association, organization, or federal, state, or local government agency or authority or other entity in the business of renting or leasing vehicles or bicycles to be used or operated in the District.

(22) The term “passenger vehicle” means any vehicle other than one registered as a commercial vehicle or for livery, rental, sightseeing, or taxi purposes.

(23) The term “person” means any natural person, firm, copartnership, association, government, government agency, or instrumentality.

(24) The term “personal injury protection” means the benefits provided pursuant to § 35-2104.

(25) The term “registration certificate” means a certificate or its duplicate issued by the Director to a registrant, containing any or all of the information that appeared on his or her application for registration, the number of the owner’s identification tags issued to the registrant for use on the vehicle described on the card and other information as the Director may determine, or

a registration certificate or its duplicate, issued by the Director to a new car dealer, or used car dealer, containing any or all of the information that appeared on his or her application for dealer's identification tags, the number of the dealer's identification tags issued to the new car dealer or used car dealer for use as provided by 18 DCMR and any other information the Director may require.

(26) The term "self-insurer" means any person having received a certificate of self-insurance issued by the Mayor pursuant to § 40-478.

(27) The term "stacking" means a legal procedure wherein the limits of liability applicable to a single motor vehicle liability policy of insurance are added to the limits of liability of all motor vehicles which may be insured by 1 motor vehicle liability policy of insurance involved in 1 accident.

(28) The term "state" means any state, territory, or possession of the United States or any possession or territory of Canada. The term "state" includes the District of Columbia.

(29) The term "Commissioner" means the Commissioner of Insurance and Securities, established by Reorganization Order No. 43, dated June 23, 1953, or the Commissioner's designee.

(30) The term "survivor" means an individual identified in the wrongful death statute of the District, as one entitled to receive benefits by reason of the death of a victim.

(31) The term "taxicab" means any public vehicle for hire having a seating capacity of less than 8 passengers, exclusive of the driver, except ambulances, funeral cars, vehicles used exclusively for sightseeing purposes, or vehicles for which the rate is fixed solely by the hour.

(32) The term "trailer" means a vehicle with or without motor power intended to be used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(32a) The term "underinsured motor vehicle" means an insured motor vehicle where the limits on 3rd-party personal liability or property damage coverage under the insurance required by § 35-2106 are insufficient to pay the loss up to the limit of uninsured motor vehicle coverage as requested by the insured.

(33) The term "vehicle" means a motor vehicle; a trailer; or an appliance moved over a highway on wheels or traction tread including draft animals and beasts of burden.

(34) The terms "victim" and "motor vehicle accident victim" mean an individual who sustains injury as a result of an accident. (Sept. 18, 1982, D.C. Law 4-155, § 3, 29 DCR 3491; Mar. 15, 1985, D.C. Law 5-176, § 2, 32 DCR 748; Mar. 4, 1986, D.C. Law 6-96, § 2(a), 32 DCR 7245; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(v), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) rewrote (29).

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 5-176.** — Law 5-176, the "Motor Vehicle Definition Wheel-chair Exception Amendment Act of 1984," was introduced in Council and assigned Bill No.



5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11- (Act 11-524) is projected to become law on May 22, 1997.

**Transfer of functions.** — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs

by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was established and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

**Personal injury protection.** — For case construing former provisions, see *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988).

**Motorcycles.** — Motorcycles were excluded from the definition of motor vehicles prior to the 1986 amendment to the No-Fault Act. *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989).

A motorcycle or moped is not a motor vehicle under an auto insurance policy which conditions an insured's ability to recover uninsured motorist benefits pursuant to the policy. *Townsend v. Waldo*, App. D.C., 640 A.2d 185 (1994).

**Preliminary finding that accident itself caused injury.** — Nothing in this chapter or in its legislative history demonstrates a legislative intent to compensate a victim without a preliminary finding that the accident, itself, caused the injury in question. *Edmonds v. Stonewall/Dixie Ins. Co.*, 114 WLR 961 (Super. Ct. 1986).

**Ownership.** — Since wife was not the vehicle's owner for the purpose of insurance or registration, she should not have been treated as its owner for purposes of the uninsured motorist statute. *Tesfamariam v. District of Columbia Dep't of Consumer & Regulatory Affairs, Ins. Admin.*, App. D.C., 645 A.2d 1105 (1994).

**Cited in** *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986); *Weeks v. Wimple*, 669 F. Supp. 499 (D.D.C. 1987); *Tapscott v. Dairyland Ins. Co.*, 673 F. Supp. 611 (D.D.C. 1987); *Hoban v. Washington Metro. Area Transit Auth.*, 841 F.2d 1157 (D.C. Cir. 1988); *Dove v. Dairyland Ins. Co.*, App. D.C., 562 A.2d 1199 (1989); *Walker v. District of Columbia*, 117 WLR 1397 (Super. Ct. 1989); *State Farm Mut. Auto. Ins. Co. v. Smalls*, 121 WLR 117 (Super. Ct. 1992); *Smith v. Washington Metro. Area Transit Auth.*, App. D.C., 631 A.2d 387 (1993); *Daniel v. District of Columbia Ins. Admin.*, App. D.C., 639 A.2d 590 (1994); *Smalls v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).

## § 35-2103. Required insurance.

(a) *Residents of District.* — Each owner of a motor vehicle which is required to be registered or for which a reciprocity sticker is required in the District shall maintain insurance required by § 35-2106. This insurance shall be in

effect continuously during the motor vehicle's period of registration or reciprocity.

(b) *Nonresidents of District owning or operating motor vehicles in District.*

(1) A person who is not a resident of the District who owns a motor vehicle shall not operate the motor vehicle, or permit the motor vehicle to be operated in the District, unless insurance required by § 35-2106 is provided and maintained during the time that the motor vehicle is present in the District.

(2) The Director shall require adequate proof of insurance as required by this section for nonresident owners or operators prior to the return of motor vehicles immobilized by the Department to the nonresident owners or operators.

(c) *Form.* (1) Any policy of motor vehicle insurance which is represented or sold as providing, pursuant to this chapter or pursuant to the coverage required by Chapter 4 of Title 40, security covering a motor vehicle or required insurance shall be deemed to provide insurance for payment of the benefits required by this chapter.

(2) The insurance required by this section may be provided under a valid policy of insurance issued by an insurer authorized to transact business in the District or by any other method approved by the Commissioner.

(d) *Administration of requirement.* (1)(A) Every person applying to register a motor vehicle in the District or applying for a reciprocity sticker for a motor vehicle in the District shall certify to the Director, on a form supplied by the Director, that the insurance required by this chapter is in effect with respect to that motor vehicle.

(B) The Director may request an insurer to verify any information provided pursuant to subparagraph (A) of this paragraph. The insurer shall accurately respond to the Director's request within 10 business days.

(C) The Director may request that the person who has certified to the Director pursuant to subparagraph (A) of this paragraph submit proof, within 15 business days, that the required insurance is in effect.

(2)(A) The Director shall suspend or revoke the license, reciprocity sticker, or registration certificate issued to the owner or operator of a motor vehicle who has been convicted of a violation of this chapter, or who knowingly operates or knowingly permits the operation of an uninsured motor vehicle, or who falsely certifies to the Director that a motor vehicle is an insured motor vehicle, or who knowingly provides the Director with false or inaccurate information as requested by the Director pursuant to this chapter.

(i) Whenever a license, reciprocity sticker, or registration certificate has been revoked or suspended under the provisions of this subsection the reasons therefor shall be set forth in the order of revocation or suspension. The order shall take effect 5 days after service or notice on the person whose license, reciprocity sticker, or registration certificate is revoked or suspended unless the person shall have filed with the Director, within the 5-day period, written application for a hearing; provided, that application to the Director for a hearing shall not operate as a stay of the order of the Director when the order has been issued revoking or suspending a reciprocity sticker or registration certificate. The hearing by the Director shall only cover the issues of whether

a policy motor vehicle of insurance has been issued to the person and had been in effect on the day the order of revocation or suspension was issued and whether the person provided the Director with false or inaccurate information.

(ii) If, following the hearing provided for in this subsection, the Director shall sustain the order of revocation or suspension, the order shall become effective immediately.

(iii) Where the registration certificate, license, or reciprocity sticker has been revoked, no new registration certificate, license, or reciprocity sticker shall be issued to the person for 6 months after the effective date of the order of revocation; provided, that no new registration certificate or reciprocity sticker shall be issued to the person until the motor vehicle is an insured motor vehicle.

(iv) If a person's registration certificate has been suspended or revoked as provided for in this subsection, the registration certificate shall not be transferred and the motor vehicle with respect to which the registration certificate was issued shall not be registered in any other name until the Director is satisfied that the transfer of the registration certificate is in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(v) Nothing in this section shall affect the rights of any conditional vendor, chattel mortgagee or lessor of the motor vehicle.

(vi) The Director shall suspend or revoke the registration certificate of any motor vehicle transferred in violation of the provisions of this section.

(vii) Decisions of the Director shall be subject to review by the Mayor. Orders and decisions of the board of review shall be appealable pursuant to § 1-1510. For the purposes of this sub-subparagraph, the phrase "review by the Mayor" shall mean a review by any board of review established by the Mayor pursuant to this chapter to review the order or act of any agent of the Mayor.

(B) A motor vehicle with respect to which the registration certificate or reciprocity sticker is suspended under this paragraph may be immobilized by the Department or the Metropolitan Police Department until the insurance required by this section is in effect.

(C) The registration certificate or reciprocity sticker and the tags of any motor vehicle, the registration or reciprocity of which is suspended under this paragraph, shall be recovered whenever possible.

(3)(A) The Director shall require all insurers authorized to sell motor vehicle insurance in the District to furnish to the Department notice of motor vehicle insurance cancellations within 30 days after the effective date of cancellation. Upon receipt of a notice of cancellation concerning a motor vehicle insurance policy on a vehicle registered in the District, the Director shall notify the person in whose name the vehicle is registered that the Director will revoke or cancel the registration of the vehicle pursuant to law.

(B) The insurers shall provide information and cooperate in prosecutions under § 35-2113.

(C) The insurers shall cooperate with, assist, and advise the Director with respect to the detection of persons who have applied for or obtained



registration certificate or reciprocity stickers for motor vehicles in the District without first obtaining the insurance, or who cancel or otherwise terminate insurance subsequent to the issuance of a registration certificate or reciprocity stickers.

(4)(A) The reasonable costs incurred by the District government in administering and enforcing the requirements of this section and § 35-2113 shall be paid from the Administration Fund.

(B) Payments from the Administration Fund shall be made for the benefit of the Commissioner and for the benefit of the Department but no payments shall be made for costs incurred by either the Department or the Commissioner prior to September 18, 1982, or which would probably have been incurred if this chapter had not been enacted. (Sept. 18, 1982, D.C. Law 4-155, § 4, 29 DCR 3491; Mar. 14, 1985, D.C. Law 5-159, § 13(a), 32 DCR 30; Mar. 4, 1986, D.C. Law 6-96, § 2(b), 32 DCR 7245; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(v), 44 DCR 1730.)

**Cross references.** — As to violations, penalties, and adjudications under this chapter, see § 35-2113.

As to senior citizen motor vehicle accident prevention course certification, see subchapter II of Chapter 4 of Title 40.

**Section references.** — This section is referred to in § 35-2113.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" once in (c)(2) and twice in (d)(4)(B).

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 5-159.** — Law 5-159, the "End of Session Technical Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2102.

**Editor's notes.** — Subsection (d)(2)(A)(i) is set forth exactly as enacted by D.C. Law 4-155. The reference in the last sentence of that subsection to "policy motor vehicle of insurance" should probably be "motor vehicle policy of insurance", given the context.

**Transfer of functions.** — See note to § 35-2102.

**Constitutionality of compulsory insurance requirements.** — The compulsory insurance requirements of the Insurance Act are a legitimate exercise of the legislative authority

of the District of Columbia City Council and do not impermissibly burden interstate commerce or violate substantive due process or the right to travel, to contract, or to petition the government for redress. *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986).

**Out-of-state coverage provisions.** — Out-of-state coverage provisions do not violate § 602(a)(3) of Self-Government Act, codified as § 1-233(a)(3), which prohibits the enactment of "any act ... which is not restricted in its application exclusively in or to the District." *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986).

**Applicability.** — The "taxicab exemption" contained in § 35-2111(e) exempts taxicabs from the insurance requirements of this section, but does not exempt taxicab drivers from the limitations on civil liability claims imposed by § 35-2105. *Johnson v. Collins*, App. D.C., 516 A.2d 196 (1986).

**Motorcycles.** — Motorcycles were excluded from the definition of motor vehicles prior to the 1986 amendment to the No-Fault Act. *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989).

**Section does not regulate coverage for foreign insurers must offer.** — The reference in this section to § 35-2106 is simply the means by which the Council of the District of Columbia specified the insurance that nonresident and resident drivers must carry in the District of Columbia, and does not attempt to regulate the coverage that foreign insurers must offer. *Dove v. Dairyland Ins. Co.*, App. D.C., 562 A.2d 1199 (1989).

A foreign insurer is not required to offer optional personal injury protection (PIP) insurance to a nonresident who is required to pur-

chase other specified coverage under subsection (b) as a condition of operating a motor vehicle in the District of Columbia. *Dove v. Dairyland Ins. Co.*, App. D.C., 562 A.2d 1199 (1989).

**Evidence sufficient.** — Evidence sufficient to support inference that the vehicle had been operated in violation of this section. *Carpenter v. District of Columbia Traffic Adjudication Appeal Bd.*, App. D.C., 530 A.2d 680 (1987).

**Cited in** *Lee v. Wheeler*, 810 F.2d 303 (D.C. Cir. 1987); *Weeks v. Wimple*, 669 F. Supp. 499

(D.D.C. 1987); *Tapscott v. Dairyland Ins. Co.*, 673 F. Supp. 611 (D.D.C. 1987); *McCrae v. Marques*, 688 F. Supp 653 (D.D.C. 1987); *Taylor v. Canady*, App. D.C., 536 A.2d 93 (1988); *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988); *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991); *State Farm Mut. Auto. Ins. Co. v. Smalls*, 121 WLR 117 (Super. Ct. 1992); *Smalls v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).

## § 35-2104. Personal injury protection.

(a) *In general.* (1) In addition to insurance required to be provided by an insurer under § 35-2106, each insurer shall offer to each person required to have insurance under this chapter optional personal injury protection insurance as set forth in this section. Personal injury protection shall provide coverage for victims for injuries arising from accidents resulting from the operation or use of a motor vehicle by the insured or use of the insured motor vehicle within or outside the District. It shall provide benefits for medical and rehabilitation expenses, work loss, and funeral benefits as set forth in this section. Personal injury protection benefits are applicable only to a victim who is an insured or an occupant of the insured's vehicle or of a vehicle which the insured is driving.

(2) An insured may obtain, solely at his or her option, any 1 or any combination of the 3 coverages for the benefits set forth in this section.

(3) A self-insurer shall state on the application for self insurance whether the self-insurer is providing personal injury protection benefits as part of the motor vehicle insurance provided for the vehicles owned by the self-insurer.

(b) *Payment without regard to fault.* — The benefits set forth in this section with respect to personal injury protection shall be provided without regard to, and irrespective of, negligence, freedom from negligence, fault, or freedom from fault on the part of any person.

(c) *Medical and rehabilitation expenses.* (1) Personal injury protection benefits shall be paid for each victim for that victim's medical and rehabilitation expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for the victim's care, recovery, or rehabilitation.

(2) Except when the victim requires special or intensive care, the medical and rehabilitation expenses paid by personal injury protection insurance shall not include charges for a hospital room which are in excess of a reasonable and necessary charge for semiprivate accommodations.

(3) Nothing in this section shall prohibit payment as medical and rehabilitation expenses of any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

(4) No payment shall be made under this subsection unless the provider of the product, service, or accommodation involved is licensed or approved and complies with any applicable laws or regulations pertinent thereto.

(5) The maximum benefits payable pursuant to this subsection for any victim shall not be less than \$50,000. Insurers providing personal injury

protection coverage shall provide insurance package optionals with medical and rehabilitation coverage of \$50,000 and \$100,000 for each victim.

(d) *Work loss.* (1) Personal injury protection benefits shall be paid pursuant to this subsection to each victim for that victim's work loss occurring during his or her life consisting of:

(A) Loss of income for work which a victim would have performed after the date of the accident if he or she had not been injured in the accident (not including any expected reduction in the amount payable by that victim for purposes of federal and District income taxation, which amount shall be presumed to be 20% of the amount otherwise payable unless the victim can show a different income taxation effect); and

(B) Replacement services loss for expenses which a victim reasonably incurred in obtaining ordinary and necessary services in lieu of those that the victim would have performed for personal or family benefit (but not for income) during the first 3 years after the date of the accident if he or she had not been injured in the accident.

(2) The maximum benefits payable for work loss for the victim for any 1 accident shall not be less than \$12,000. Insurers shall provide insurance options with work loss coverages of at least \$12,000 and \$24,000.

(3) Benefits payable for work loss do not include any loss incurred after the date of a victim's death, if the victim dies for any reason.

(e) *Funeral benefits.* — Personal injury protection benefits shall be paid to the survivors of each victim as funeral and funeral-related benefits. The benefits payable pursuant to this subsection for funeral and funeral-related benefits for any 1 victim shall be actual costs up to \$4,000. (Sept. 18, 1982, D.C. Law 4-155, § 5, 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96, § 2(c), 32 DCR 7245.)

**Section references.** — This section is referred to in §§ 35-2102, 35-2105, and 35-2106.

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Preliminary finding that accident itself caused injury.** — Nothing in this chapter or in its legislative history demonstrates a legislative intent to compensate a victim without a preliminary finding that the accident, itself, caused the injury in question. *Edmonds v. Stonewall/Dixie Ins. Co.*, 114 WLR 961 (Super. Ct. 1986).

**Pain and suffering.** — For case construing former provisions, see *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988).

**Workers' compensation.** — Workers' compensation benefits paid which satisfy in whole or in part the personal injury protection benefits which must be paid under no-fault insurance provisions are effectively personal injury protection payments under this section. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987), (decision under law prior to 1986 amendments to § 35-2101 et seq.).

The Workers' Compensation Act, § 36-301 et seq., does not make benefits paid under workers' compensation secondary or duplicative of no-fault insurance personal injury protection (PIP) benefits; therefore, PIP benefits must be paid only if the benefits paid under workers' compensation do not accord an injured individual the full measure of recovery he would receive from PIP benefits. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987), (decision under law prior to 1986 amendments to § 35-2101 et seq.).

**Exemption of self-insurers.** — The D.C. Council intended to exempt self-insurers from both the personal injury protection requirements of this section, and the uninsured motorist protection and underinsured motor vehicle coverage requirements of § 35-2106. *Coates v. Washington Metro. Area Transit Auth.*, 742 F. Supp. 10 (D.D.C. 1990).

**Exemption of taxicabs.** — Taxicabs are exempt from the requirements of this section. *Hill v. Maryland Cas. Co.*, App. D.C., 620 A.2d 1336 (1993).

**Cited in** *Johnson v. Collins*, App. D.C., 516 A.2d 196 (1986); *Lee v. Wheeler*, 810 F.2d 303



(D.C. Cir. 1987); *Tapscott v. Dairyland Ins. Co.*, 673 F. Supp. 611 (D.D.C. 1987); *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989); *Lee v. District of Columbia*, App. D.C., 559 A.2d 308 (1989); *Dove v. Dairyland Ins. Co.*,

App. D.C., 562 A.2d 1199 (1989); *Smith v. Washington Metro. Area Transit Auth.*, App. D.C., 631 A.2d 387 (1993); *Smalls v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).

### **§ 35-2105. Lawsuit restriction and opportunity for arbitration under optional insurance.**

(a) A victim shall notify the personal injury protection insurer within 60 days of an accident of the victim's election to receive personal injury protection benefits.

(b) A victim who elects to receive personal injury protection benefits may maintain a civil action based on liability of another person only if:

(1) The injury directly results in substantial permanent scarring or disfigurement, substantial and medically demonstrable permanent impairment which has significantly affected the ability of the victim to perform his or her professional activities or usual and customary daily activities, or a medically demonstrable impairment that prevents the victim from performing all or substantially all of the material acts and duties that constitute his or her usual and customary daily activities for more than 180 continuous days; or

(2) The medical and rehabilitation expenses of a victim or work loss of a victim exceeds the amount of personal injury protection benefits available.

(c) Nothing in subsection (b) of this section shall prevent the survivors of a victim whose death arises out of the maintenance or use of a motor vehicle from maintaining a civil action based on the liability of another person for the loss and noneconomic loss resulting from the victim's death regardless of whether the victim had previous to his or her death elected to receive personal injury protection benefits.

(d) The insurer must notify any identifiable victim in writing of the 60-day election period.

(e) The 60-day election period may be extended upon the mutual written agreement of the victim and the insurer.

(f) If a victim is incapacitated or in some other way unable to make the election, it may be made by the next closest relative, or if there is no relative, an individual taking responsibility for the victim's affairs.

(g) If the covered victim fails to make an election within the 60-day period, the mandatory liability insurance coverage applies.

(h) Except as provided in subsection (i) of this section, any person having a claim under the mandatory insurance required in § 35-2106 or the optional insurance offered pursuant to § 35-2104 may request that the claim be resolved by arbitration before the Board of Consumer Claims Arbitration for the District of Columbia, established by § 40-1303. If the other party or parties to the action consent, the Board may hear and decide the matter. Arbitration of these claims shall be binding.

(i) Insurers shall arbitrate and settle all disputed claims made for automobile physical damage between them in accordance with the terms of the Nationwide Intercompany Arbitration Agreement ("Agreement") as adopted

and from time to time amended by its members, and the rules promulgated pursuant to the Agreement, unless the parties mutually agree, on a per case basis, to use another arbitration forum, in which case the claim shall be arbitrated in that alternate forum. Mandatory arbitration of disputed claims shall be limited solely to the issues of liability and damages. Every automobile liability or physical damage insurer doing business in the District of Columbia shall be a member of the Nationwide Intercompany Arbitration Agreement sponsored by the Committee on Insurance Arbitration. (Sept. 18, 1982, D.C. Law 4-155, § 6, 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96, § 2(d), 32 DCR 7245; Sept. 20, 1996, D.C. Law 11-160, § 2(a), 43 DCR 3722.)

**Section references.** — This section is referred to in §§ 35-2111 and 40-1303.

**Effect of amendments.** — D.C. Law 11-160 added “Except as provided in subsection (i) of this section” at the beginning of (h); and added (i).

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 11-160.** — Law 11-160, the “Automobile Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-157, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 26, 1996, it was assigned Act No. 11-296 and transmitted to both Houses of Congress for its review. D.C. Law 11-160 became effective on September 20, 1996.

**Report by Commissioner of Insurance and Securities.** — Section 5 of D.C. Law 11-160 provided that “Within two years of September 20, 1996, the Commissioner of Insurance and Securities shall prepare and submit to the Council of the District of Columbia for its review a report on the impact of this act on the private passenger motor vehicle insurance market or any part thereof, the funding for the Office of Insurance, the District of Columbia insurance premium tax, the number of insurers doing business in the District, and the number of insurers domiciled in the District of Columbia. In preparing such report, the Commissioner may request from specific private passenger motor vehicle insurers doing business in the District, or from all such insurers, reasonable and pertinent information. Information which is proprietary to any affected insurer shall be treated as confidential by the Commissioner, but may be used in the aggregate with other information from other affected insurers for statistical or other reporting purposes.”

**Pain and suffering.** — For case construing former provisions, see *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988).

**Constitutionality of former paragraph (b)(6).** — Paragraph (b)(6) of this section, as it appeared prior to the amendment effective March 4, 1986, did not violate the Self-Government Act by altering the civil jurisdiction of the District of Columbia Superior Court in defining its jurisdiction in automobile accident tort cases to extend only to cases where \$5,000 in medical expenses have been incurred. *Dimond v. District of Columbia*, 792 F.2d 179 (D.C. Cir. 1986).

The classification formerly drawn by subsection (b)(6) of this section, which had restricted a victim’s right to bring a tort suit to recover noneconomic losses unless the victim had incurred \$5,000 or more in medical expenses, bore a rational relationship to a legitimate governmental purpose and must be sustained under the equal protection principles embodied in the Fifth Amendment due process clause. *Dimond v. District of Columbia*, 792 F.2d 179 (D.C. Cir. 1986).

**Applicability.** — The “taxicab exemption” contained in § 35-2111(e) exempts taxicabs from the insurance requirements of § 35-2103, but does not exempt taxicab drivers from the limitations on civil liability claims imposed by this section. *Johnson v. Collins*, App. D.C., 516 A.2d 196 (1986).

**Application of amendments on recovery for noneconomic loss.** — The 1982 No-Fault Insurance Act as it existed prior to the amendments which became effective on March 4, 1986, still governs the ability to bring tort suits for noneconomic loss arising from accidents occurring before the amendments took effect; because the amendments are not retroactive, they do not give victims the ability to recover for noneconomic loss stemming from accidents occurring before the amendments became effective. *Dimond v. District of Columbia*, 792 F.2d 179 (D.C. Cir. 1986).

**Claim for punitive damages dismissed.** — Claim for punitive damages was dismissed where the decision to terminate PIP benefits, made by two claim representatives and reviewed by a claim committee and a representative at the corporate office, was not malicious,

oppressive, or made with willful disregard of the plaintiff's rights. *State Farm Mut. Auto. Ins. Co. v. Hoang*, App. D.C., 682 A.2d 202 (1996).

**Waiver of other claims.** — An election to receive personal injury protection (PIP) benefits barred accident victims from maintaining a negligence action against the other driver. *Lee v. Jones*, App. D.C., 632 A.2d 113 (1993).

Once accident victims accepted PIP benefits, they forfeited their rights to recover under uninsured motorist provision of an insurance contract. *Lee v. Jones*, App. D.C., 632 A.2d 113 (1993).

Plaintiff under this act prior to the 1986 amendments could maintain a civil action only for noneconomic loss thus such a plaintiff's claims for medical bills and lost wages would be stricken. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

Plaintiff did not commit a violation of Superior Court Civil Rule 11 simply because she included in her complaint under the No-Fault Act a claim for lost wages. *Walker v. District of Columbia*, App. D.C., 656 A.2d 722 (1995).

**Exceptions to waiver of claims.** — Although under the No-Fault Act motorists who elect to receive personal injury protection (PIP) benefits are generally barred from pursuing private tort actions seeking damages for their injuries, the No-Fault Act contains exceptions for certain injured accident victims to bring tort actions even after having received PIP benefits. *Musa v. Continental Ins. Co.*, App. D.C., 644 A.2d 999 (1994).

**Standard of proof.** — The proper analysis of proof under subsection (b) follows the traditional summary judgment and directed verdict standards. *State Farm Mut. Auto. Ins. Co. v. Hoang*, App. D.C., 682 A.2d 202 (1996).

**Resumption of normal activities negates substantial impairment exception.** —

Where it appeared from the record that despite his accident the appellant was able to resume the activities that had previously occupied most of his waking hours — going to school and working as a security guard — appellant could not rely on the exception set forth in subsection (b)(1) which requires substantial impairment significantly affecting activities before one can sue in tort after receiving PIP benefits. *Continental Ins. Co.*, App. D.C., 644 A.2d 999 (1994).

**Role of jury.** — Beyond the gate-keeping role of the court implicit in the summary judgment and directed verdict standards of subdivision (b)(1), the jury will perform additional screening in cases submitted to it, since it will decide the statutory threshold issues on interrogatories before reaching the merits of the plaintiff's suit. *State Farm Mut. Auto. Ins. Co. v. Hoang*, App. D.C., 682 A.2d 202 (1996).

**Initial burden of proof met.** — Testimony of a neurologist and a chiropractor regarding plaintiff's condition after the injury, taken together, satisfied the requirements of subdivision (b)(1). *State Farm Mut. Auto. Ins. Co. v. Hoang*, App. D.C., 682 A.2d 202 (1996).

**Cited in** *Weeks v. Wimple*, 669 F. Supp. 499 (D.D.C. 1987); *Makanju v. Saunders*, App. D.C., 519 A.2d 703 (1987); *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989); *Stackhouse v. Schneider*, App. D.C., 559 A.2d 306 (1989); *Lee v. District of Columbia*, App. D.C., 559 A.2d 308 (1989); *Walker v. District of Columbia*, 117 WLR 1397 (Super. Ct. 1989); *In re Banks*, App. D.C., 577 A.2d 316 (1990); *Smith v. Washington Metro. Area Transit Auth.*, App. D.C., 631 A.2d 387 (1993).

## § 35-2106. Availability of required and optional insurance and benefits.

(a) *In general.* (1)(A) After consultation with insurers authorized to sell motor vehicle insurance in the District, the Commissioner shall from time to time approve, with any reasonable modifications, a reasonable plan or plans to assure the availability, to all owners of motor vehicles, of the insurance required to be maintained and of the insurance required to be offered by this chapter. The plan shall provide for suitable apportionment, by the manager or committee designated to operate the plan, among insurers of applicants for any of the insurance who are unable to obtain insurance reasonably through ordinary methods.

(B) When a plan has been approved by the Commissioner, all insurers authorized to sell motor vehicle insurance in the District shall subscribe thereto, cooperate therewith, and participate therein; provided, however, that no insurer shall be required to quote plan rates to applicants for voluntary



insurance or to seek waivers from the plan before selling such voluntary insurance.

(C) Any applicant for a policy, any named beneficiary or insured under a policy issued pursuant to the plan, and any insurer may appeal to the Commissioner from any decision of the manager or committee designated to operate the plan.

(D) Each insurer selling motor vehicle insurance in the District shall be required to offer insurance which shall provide at least all minimum benefits required by this chapter with respect to: (i) property damage liability; (ii) third-party personal liability; and (iii) uninsured motorist protection. In addition, each insurer shall offer optional personal injury protection insurance required by § 35-2104 and underinsured motor vehicle coverage as required by this section. Taxicab insurers and self-insurers shall be exempt from the requirement to offer optional personal injury protection insurance. Taxicab insurers and self-insurers shall also be exempt from the requirements of § 35-2104 that they offer uninsured motorist protection and underinsured motor vehicle coverage.

(2) Each insurer selling motor vehicle insurance in the District shall make the insurance policy understandable to policyholders. Each insurance company shall provide to policy holders at least annually the following information:

(A) A listing of each type of coverage available; and

(B) An explanation of the mandatory insurance and required options created under this chapter;

(C) An explanation of the mandatory insurance and required options created under this chapter.

(3) Repealed.

(4) Repealed.

(5) No insurer authorized to sell motor vehicle insurance in the District shall increase the rates charged an insured on account of an accident unless it is first determined that the accident was caused by the fault of the insured.

(b) *Property damage insurance.* — Property damage insurance shall provide that any liability to an insured to pay for property damage to any vehicle or other property not owned or controlled by the insured, in accordance with applicable law, shall be paid by the applicable insurer up to an amount requested by the named insured. The minimum amount of property damage liability insurance coverage that a named insured shall purchase is \$10,000 for property damage in any 1 accident.

(c) *Third-party personal liability.* — Third-party personal liability coverage shall provide that any liability of an insured to pay for injury arising from an accident within or outside the District of Columbia, in accordance with applicable law, shall be paid by the insurer up to the amount established in the policy. The minimum amount of 3rd-party personal liability coverage that an insured shall purchase shall be \$25,000 per person injured in any 1 accident and \$50,000 for all persons injured in any 1 accident.

(c-1) *Underinsured motor vehicle coverage.* — Underinsured motor vehicle coverage is for the protection of an insured who is legally entitled to recover

damages from the owner or operator of an underinsured motor vehicle. Each insurer shall offer, except for the operation of motorcycles, optional underinsured motor vehicle coverage in amounts up to the amounts of the uninsured motorist coverage as requested by the insured. Once an insured has rejected this underinsured motor vehicle coverage the insurer does not have to reoffer it. The insurer shall not be required to obtain or maintain written rejections of the underinsured motor vehicle coverage. The benefits provided by the underinsured motor vehicle coverage shall be subject to the same provisions as denials or exclusions of coverages, insolvency, subrogation, and set-off as provided in the uninsured motorist coverage. Nothing in this section shall prohibit the inclusion of underinsured motor vehicle coverage in any uninsured motor vehicle coverage provided in compliance with this chapter. Insurance that includes underinsured motor vehicle coverage may include terms and conditions that preclude stacking of underinsured motor vehicle coverage.

(d) *Eligibility for benefits.* — Repealed.

(e) *Ineligibility for benefits.* — Repealed.

(f) *Mandatory uninsured motorist protection.* (1) For the purposes of this subsection, the term “uninsured motor vehicle” means a motor vehicle which:

(A) Is a motor vehicle which is not insured by a motor vehicle liability policy applicable to the accident;

(B) Is covered by a motor vehicle liability policy of insurance but the insured denies coverage for any reason or becomes the subject of insolvency proceedings in any jurisdiction; or

(C) Is a motor vehicle which causes bodily injury or property damage and whose owner or operator cannot be identified.

(2) Each insurer selling motor vehicle insurance in the District with respect to any motor vehicle registered or principally garaged in the District shall include coverage for bodily injury or death in amounts of \$25,000 per person injured in any 1 accident, or \$50,000 for all persons injured in any 1 accident, and coverage for property damage in an amount of \$5,000 for property damage in any 1 accident for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.

(3) Any payments for property damage made pursuant to this subsection shall be subject to a deductible amount of \$200.

(4) The named insured may require the issuance of coverage for bodily injury or death and property damage in accordance with a schedule of optional higher amounts up to the amount of \$100,000 per person injured in any 1 accident or \$300,000 for all persons injured in any 1 accident, and up to \$25,000 for property damages for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.

(5) To the extent of any payment made to any person by the insurer under the coverage required by this section and subject to the terms and conditions of the coverage, the insurer is entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of any person

against any other person legally responsible for the bodily injury or death for which the payment is made, including any amount recoverable from an insurer which is or becomes the subject of an insolvency proceeding through such proceedings or in any other lawful manner.

(6) No insurer shall attempt to recover any amount against the insured of an insurer which is or becomes the subject of insolvency proceedings.

(7) Any motor vehicle policy of insurance may include terms and conditions that preclude stacking of uninsured motor vehicle coverages.

(g) *Prohibitions.* — A victim is prohibited from claiming personal injury protection benefits under this chapter, other than to compensate for any deductible, if the victim is eligible for compensation for the loss covered by personal injury protection from another insurer or another insurance coverage, unless the victim has exhausted benefits offered by the insurer or insurance coverage. (Sept. 18, 1982, D.C. Law 4-155, § 7, 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96, § 2(e), 32 DCR 7245; Feb. 24, 1987, D.C. Law 6-192, § 19, 33 DCR 7836; Sept. 20, 1996, D.C. Law 11-160, § 2(b), 43 DCR 3722; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(v), 44 DCR 1730.)

**Cross references.** — As to senior citizen motor vehicle accident prevention course certification, see subchapter II of Chapter 4 of Title 40.

**Section references.** — This section is referred to in §§ 35-2102, 35-2103, 35-2104, 35-2105, and 35-2111.

**Effect of amendments.** — D.C. Law 11-160 added the proviso in (a)(1)(B); and rewrote (a)(2).

D.C. Law 11- (D.C. Act 11-524) substituted "Commissioner" for "Superintendent" throughout (a)(1).

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 6-192.** — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11-160.** — See note to § 35-2105.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2102.

**Report of the Commissioner of Insurance and Securities.** — Section 5 of D.C. Law 11-160 provided that "Within two years of September 20, 1996, the Commissioner of Insurance and Securities shall prepare and submit to the Council of the District of Columbia for its review a report on the impact of this act on the private passenger motor vehicle insurance

market or any part thereof, the funding for the Office of Insurance, the District of Columbia insurance premium tax, the number of insurers doing business in the District, and the number of insurers domiciled in the District of Columbia. In preparing such report, the Commissioner may request from specific private passenger motor vehicle insurers doing business in the District, or from all such insurers, reasonable and pertinent information. Information which is proprietary to any affected insurer shall be treated as confidential by the Commissioner, but may be used in the aggregate with other information from other affected insurers for statistical or other reporting purposes."

**Department of Insurance abolished.** — See note to § 35-2102.

**Constitutionality of compulsory insurance requirements.** — The compulsory insurance requirements of the Insurance Act are a legitimate exercise of the legislative authority of the District of Columbia City Council and do not impermissibly burden interstate commerce or violate substantive due process or the right to travel, to contract, or to petition the government for redress. *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986).

**Minimum amounts of uninsured motorist coverage must be included in every policy or will be inserted as matter of law.** — Uninsured motorist coverage must be included in every policy, and insurer's failure to assess a premium for such coverage is its burden to bear; minimum amount of uninsured motorist protection required by this section must be inserted as a matter of law into plaintiff's motorcycle insurance policy. *Tapscott v. Dairyland Ins. Co.*, 673 F. Supp. 611 (D.D.C. 1987).



**Waiver of uninsured motorist protection is not permitted.** — Rejection statement in the insurance application was unenforceable since waiver of uninsured motorist protection is not permitted under this section. *Tapscott v. Dairyland Ins. Co.*, 673 F. Supp. 611 (D.D.C. 1987).

**Out-of-state coverage provisions.** — Out-of-state coverage provisions do not violate § 602(a)(3) of the Self-Government Act, codified as § 1-233(a)(3), which prohibits the enactment of "any act . . . which is not restricted in its application exclusively in or to the District." *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986).

**Insurance coverage for third parties.** — Given the stated legislative purpose of this Act, which was designed to provide adequate protection for victims who are injured in the District, it is reasonable to assume that references to "third-party" in subsection (a)(1)(D) and (c) were meant to refer to persons injured by an insured tortfeasor, as distinguished from coverage for the insured tortfeasor's own injuries. *State Farm Mut. Auto. Ins. Co. v. Smalls*, 121 WLR 117 (Super. Ct. 1992).

**Household exclusion clauses.** — As long as the minimum insurance requirements of subsection (c) are met, the household exclusion clause in an insurance policy, limiting further third-party liability above and beyond the statutory minimum, is not inconsistent with this chapter's remedial purpose. *Smalls v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).

Household exclusion clause contained in automobile liability insurance policy, which stated that no coverage was provided for bodily injury to any insured or member of insured's family residing in insured's household, was invalid to the extent it conflicted with \$25,000/\$50,000 minimum liability coverage requirement imposed by subsection (c); nevertheless, the exclusion clause was valid to the extent it limited further third-party liability above and beyond the statutory minimum. *Smalls v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).

**Coverage that follows vehicle.** — Subsection (f)(2) appears to permit insurers to provide coverage that follows the vehicle, not the person. *Hill v. Maryland Cas. Co.*, App. D.C., 620 A.2d 1336 (1993).

**"Set-off" provisions.** — A "set-off" provision in an insurance policy may not operate to reduce the value of plaintiff's recovery on automobile liability policy below the statutory minimum. *Maddox v. Doe*, 122 WLR 69 (Super. Ct. 1993).

**Unenforceable provisions.** — To the extent that an insurance policy with plaintiff's employer required contact between the insured

and uninsured motor vehicles before coverage applied, it was inconsistent with the District's compulsory minimum automobile insurance laws and therefore unenforceable as against public policy. *Maddox v. Doe*, 122 WLR 69 (Super. Ct. 1993).

The government notification provision of an insurance policy was neither sufficiently clear nor consistent with the uninsured motorist statute to be valid and enforceable because the location of the government notification provision in the "Hit-and-Run Auto" section of the policy created an ambiguity; the colloquial meaning of "hit-and-run" suggests illegal action, and the requirements in the policy were not congruent with reporting requirements established by law. *Price v. Doe*, App. D.C., 638 A.2d 1147 (1994).

**Ambiguous provisions.** — By taking the third statutory uninsured motorist category, subdivision (f)(1)(C), out of the "Uninsured Auto" portion of the policy (where the other two statutory categories are covered) and placing it separately in a "Hit-and-Run Auto" portion of the policy, the policy was not "clear and unambiguous;" it did not tell insured that she had to notify the police or lose coverage. *Price v. Doe*, App. D.C., 638 A.2d 1147 (1994).

**Exclusive remedy provisions.** — The exclusive remedy provisions of the Workers' Compensation Act do not bar an employee from seeking uninsured motorist benefits from his employer. *Holmes v. Washington Metro. Area Transit Auth.*, 731 F. Supp. 1115 (D.D.C. 1990).

**Exemption of self-insurers.** — The D.C. Council intended to exempt self-insurers from both the personal injury protection requirements of § 35-2104, and the uninsured motorist protection and underinsured motor vehicle coverage requirements of this section. *Coates v. Washington Metro. Area Transit Auth.*, 742 F. Supp. 10 (D.D.C. 1990).

**Reduction of policy limits.** — An insurance carrier could draft a contract which provided for a reduction of the policy limit by any amount received in compensation for the injuries inflicted by an uninsured motorist, including workers' compensation. *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991).

Where an insurer provides for a reduction of the policy limit by any amount received as compensation for injuries, if such a contract fails to provide the mandatory minimum amount of coverage required of the insurer by the No-Fault Act because of such a reduction, the contract must yield to the statute, and the court may not enforce the contract to the extent that it violates the governing law. *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991).

**Motorcycles.** — Prior to the 1986 amendment of the No-Fault Act, motorcyclists were

not subject to former subsection (e)(1) of this section, because motorcycles were excluded from the definition of a "motor vehicle" for which the No-Fault Act required insurance. *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989).

**Eligibility for benefits.** — For case construing former provisions, see *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988).

**Ineligibility for benefits.** — Taxi driver who leased his vehicle from cab company was not the owner of the vehicle, and not ineligible under former subsection (e)(1)(A). Further-

more, even if he were the owner, he would not have fallen within former subsection (e)(1)(B). The taxicab was not required to have personal injury protection insurance because it was exempt under § 35-2111(e). *Johnson v. Collins*, App. D.C., 516 A.2d 196 (1986).

**Cited in** *Weeks v. Wimple*, 669 F. Supp. 499 (D.D.C. 1987); *Dove v. Dairyland Ins. Co.*, App. D.C., 562 A.2d 1199 (1989); *Walker v. District of Columbia*, 117 WLR 1397 (Super. Ct. 1989); *Colonial Penn Ins. Co. v. Owens*, 728 F. Supp. 798 (D.D.C. 1990).

## § 35-2107. Priorities for the payment of personal injury protection benefits.

(a) The insurer responsible for the payment of personal injury protection benefits shall be determined in accordance with, and in the order of, priorities set forth in this section. The insurer liable to pay benefits is:

(1) The insurer providing personal injury protection insurance under which the victim is the named insured; or

(2) The insurer providing personal injury protection with respect to the motor vehicle in which, at the time of the accident, the victim is present.

(b) If 2 or more obligations to pay personal injury protection benefits apply equally to an injury, the insurer against which the claim is asserted first shall process and pay the claim as if wholly responsible, subject to subsequent contribution pro rata from any other insurer for the amount of benefits paid and for the cost of processing the claim. (Sept. 18, 1982, D.C. Law 4-155, § 8, 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96, § 2(f), 32 DCR 7245.)

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Workers' compensation.** — The Workers' Compensation Act, § 36-301 et seq., does not make benefits paid under workers' compensation secondary or duplicative of no-fault insurance personal injury protection (PIP) benefits; therefore, PIP benefits must be paid only if the benefits paid under workers' compensation do not accord an injured individual the full measure of recovery he would receive from PIP benefits. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

Workers' compensation benefits paid which satisfy in whole or in part the personal injury protection benefits which must be paid under no-fault insurance provisions are effectively personal injury protection payments under § 35-2104, thus, the employer who has paid workers' compensation benefits that partially or fully satisfy the required personal injury protection benefits required under the no-fault insurance provisions may, therefore, obtain reimbursement from the insurer of the liable

third party. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

The no-fault insurance provisions serve as the primary statutory scheme governing parties' rights in situations in which both no-fault and workers' compensation apply, and although the benefits payable under workers' compensation are primary over no-fault personal injury protection benefits, the remedies under workers' compensation for an employer to recoup benefits paid from liable third parties are not primary over the remedies set forth in the no-fault provisions, thus, in situations where both no-fault and workers' compensation apply, an employer may recoup benefits paid under workers' compensation only through the avenues provided in no-fault. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

**Nonresidents.** — A nonresident cannot recover from the insurer of the nonresident's motor vehicle under this section if that motor vehicle is not involved in an accident in the District. *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989).

**Cited in** *Weeks v. Wimple*, 669 F. Supp. 499 (D.D.C. 1987); *Makanju v. Saunders*, App. D.C.,

519 A.2d 703 (1987); *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988); *Walker v. District of Columbia*, 117 WLR 1397 (Super. Ct. 1989);

*Messina v. Nationwide Mut. Ins. Co.*, 998 F.2d 2 (D.C. Cir. 1993).

## § 35-2108. Administration Fund.

Repealed. Oct. 21, 1993, D.C. Law 10-40, § 13(a), 40 DCR 6009.

**Legislative history of Law 10-40.** — Law 10-40, the “Insurance Regulatory Trust Fund Act of 1993,” was introduced in Council and assigned Bill No. 10-93, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-75 and transmitted to both Houses of Congress for its review. D.C. Law 10-40 became effective on October 21, 1993.

## § 35-2109. Consumer protection.

(a) *Grounds for cancellation of policy.* — No insurer shall cancel a policy except:

(1) For refusal or failure of the insured to pay a premium due under the terms of the policy of motor vehicle insurance;

(2) Where the motor vehicle registration certificate of the insured has been suspended or revoked during the period of the policy of motor vehicle insurance; or

(3) Where the license of an insured has been suspended or revoked during the period of a policy of motor vehicle insurance, the insurance shall not provide coverage for such insured during the period of suspension or revocation.

(b) *Notice required of cancellation of or refusal to renew policy.* — No cancellation or refusal to renew by an insurer of a policy of motor vehicle insurance shall be effective unless the insurer has delivered or mailed to the named insured, at his or her last known address, a written notice of intent to cancel or refusal to renew. The required notice shall be provided to the named insured at least 30 days prior to the effective date of cancellation, or in the case of nonrenewal, 30 days prior to the end of the policy period. The notice shall contain the following:

(1) A statement of the specific reason or reasons relied upon by the insurer as the basis of cancellation or refusal to renew;

(2) A statement advising the named insured of his or her right to request, in writing, within 15 days of receipt of the notice, that the Commissioner review the action of the insurer in cancelling or refusing to renew the policy of such insured;

(3) A statement advising the insured of the possible availability of other insurance which may be obtained through his or her agent, through another insurer, or through the District of Columbia automobile insurance plan; and

(4) A statement that the motor vehicle registration of the vehicle will be cancelled or revoked for failure to maintain required insurance.

(c) *Proof of mailing notice.* — Proof of mailing of the notice of cancellation, or of intention not to renew, to the named insured by post office receipt secured or certified mail at the address shown in the policy or to the named insured’s last known address, shall be sufficient proof of notice.



(d) *Consequences of failure to provide required notice.* — Despite failure of the named insured to make timely payment of the renewal premium, failure by the insurer to provide the notice required by this section shall result in the insurer being required:

(1) To provide coverage for any claim which would have been covered under the policy, if a claim arises within 45 days after the date within which the named insured discovers or should have discovered that his or her policy has not been renewed; and

(2) To renew the policy upon tender of payment; provided, that tender is made within 15 days after the date the named insured discovers, or should have discovered, that his or her policy has not been renewed.

(e) *Prohibited discrimination.* — No insurer, other than a self-insurer, shall fail or refuse to issue a policy of motor vehicle insurance to an applicant, fail or refuse to renew a policy of motor vehicle insurance, or cancel a policy of motor vehicle insurance for any reason provided in Chapter 25 of Title 1.

(f) *Prohibited inquiries concerning prior cancellation or nonrenewals.* — No applicant for a policy of motor vehicle insurance, as a condition precedent to obtaining a policy or renewing a policy, shall be required to disclose whether he, she, or any person reasonably expected to operate the applicant's motor vehicle has ever had an insurance policy cancelled or nonrenewed; provided, however, that at the time of application an applicant may be required to disclose his or her experience as an operator of a motor vehicle for a past period of not more than 3 years, and that of any person reasonably expected to operate the motor vehicle.

(g) *Refusal to accept brokerage business.* — An insurer or agent that accepts brokerage business and rejects the business of a broker shall provide the Mayor and the broker, upon the request of the broker, the reasons in writing for such rejection.

(h) *Policies in effect less than 60 days.* — The restrictions on cancellation contained in this section shall not be effective with respect to any policy which shall have been in force for 60 days or less if the policy is not a renewal policy.

(i) *Appeal procedure.* (1) If the insured disputes the validity of a purported cancellation or nonrenewal, the insured may, within 15 days of receipt of the notice of intent to cancel or not to renew, send written notification to the Commissioner of the reasons the insured believes the action by the insurer is invalid. The Commissioner shall, upon receipt, immediately send the insurer a copy of the notification.

(2) Unless the matter referred to in paragraph (1) of this subsection has been settled, the Commissioner shall determine, within 45 days calendar days, whether the cancellation or nonrenewal was authorized under the terms of this section and shall notify immediately the insured and the insurer in writing of the decision.

(3) If the Commissioner determines that a policy was improperly cancelled or not renewed, the policy in question shall be considered to be in effect and to have been in effect from the period of notification of cancellation or nonrenewal. If the Commissioner determines that a policy was properly cancelled or not renewed, the policy in question shall be considered to be

cancelled or not renewed as of the cancellation or nonrenewal date given in the notice sent by the insurer pursuant to this section or as of the date of determination by the Commissioner, whichever is later. The insured shall pay any portion of the required premium or cost to the insurer for the insurance coverage in effect and provided by the insurer for which the insured has not paid.

(4) Decisions of the Commissioner shall be appealable pursuant to subchapter I of Chapter 15 of Title 1.

(j) *Immunity.* — There shall be no liability on the part of and no cause of action of any nature shall arise against any employee of the District government, any insurer, its authorized representatives, its agents, its employees, or any firm, person, or corporation who, in good faith:

(1) Furnishes to the named insured information as to reasons for cancellation or nonrenewal;

(2) Makes any statement in any written notice of cancellation or renewal;

(3) Makes any other communication, oral or written, specifying the reasons for cancellation or nonrenewal;

(4) Provides information pertaining to the insured; or

(5) Makes statements or submits evidence at any hearing conducted in connection therewith.

An insurer may request the disclosure for a period exceeding 3 years for the sole purpose of providing a discount on the premium or cost of the motor vehicle insurance at the request of the insured.

(k) *Other rights.* — The rights provided by this chapter shall be in addition to and shall not prejudice any other rights the named insured may have at common law or otherwise.

(l) *Terms more favorable; prohibition of waiving rights.* — A policy may provide terms more favorable to named insureds than are required by this chapter, but no policy shall contain any provisions which waives any of the requirements of this chapter.

(m) *Consumer's right to information.* — A copy of the provisions of this section shall be provided, in writing, by the insurer to the named insured at the time of the initial purchase of insurance, or in the case of insurance renewal, provided, in writing, to the named insured by the insurer at the time of the 1st renewal after September 18, 1982.

(n) *Nondiscrimination against persons not previously insured.* — No insurer shall refuse to insure, refuse to continue to insure, limit coverage available to, or charge a disadvantageous rate to any person seeking to obtain insurance required by this act because that person had not been previously insured. This provision shall not apply if the applicant was required by law to maintain automobile insurance coverage and failed to do so. An insurer may require reasonable proof that the applicant did not fail to maintain this coverage. The insurer is not required to accept the mere lack of a conviction or citation for failure to maintain this coverage as proof of maintenance of coverage.

(o) *Insurer to provide settlement.* — Each insurer shall, at the time of

renewal or denial of a motor vehicle insurance policy, provide to an applicant a statement which provides the following information:

(1) The cost of the minimum package of insurance required by this chapter; and

(2) In the case of a denial, specific reasons for the denial. (Sept. 18, 1982, D.C. Law 4-155, § 10, 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96; § 2(i), 32 DCR 7245; Sept. 20, 1996, D.C. Law 11-160, § 2(c), 43 DCR 3722; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(v), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2111.

**Effect of amendments.** — D.C. Law 11-160 deleted the former second sentence in the introductory paragraph of (b); substituted “60 days” for “30 days” in (h); and added the last three sentences in (n).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout (b) and (i).

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 11-160.** — See note to § 35-2105.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2102.

**Report of the Commissioner of Insurance and Securities.** — Section 5 of D.C. Law 11-160 provided that “Within two years of September 20, 1996, the Commissioner of Insurance and Securities shall prepare and submit to the Council of the District of Columbia for its review a report on the impact of this act on the private passenger motor vehicle insurance market or any part thereof, the funding for the Office of Insurance, the District of Columbia insurance premium tax, the number of insurers doing business in the District, and the number of insurers domiciled in the District of Columbia. In preparing such report, the Commissioner may request from specific private passenger motor vehicle insurers doing business in the District, or from all such insurers, reasonable and pertinent information. Information which is proprietary to any affected insurer shall be treated as confidential by the Commissioner, but may be used in the aggregate with other information from other affected insurers for statistical or other reporting purposes.”

**Editor’s notes.** — Near the middle of paragraph (2) of subsection (i), the phrase “45 days calendar days” is set forth exactly as enacted by D.C. Law 6-96.

**Department of Insurance abolished.** — See note to § 35-2102.

**Applicability.** — In contrast to § 35-1561, which applies to cancellation of policies by premium finance companies with power of attorney, this section by its terms applies only to

cancellation of policies by insurers. *Atwater v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 566 A.2d 462 (1989).

The thirty-day notice provisions of subsection (b) apply only in cases of “cancellation or refusal to renew by an insurer” of a policy of motor vehicle insurance. The insured would not be entitled to notice of cancellation if he were the party cancelling the contract, as one is not given notice of one’s own actions, and it follows from the unambiguous provisions of § 35-1561(c) that an insured is not entitled to notice of cancellation from the insurer where the cancellation is requested by the finance company as his agent. *Atwater v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 566 A.2d 462 (1989).

The purpose of subsection (b) is to give the insured adequate time to procure new coverage before coverage under an old policy lapses. Where the insured knew or should have known substantially before the accident that his coverage had lapsed for non-payment of premiums, the reason for voiding the cancellation does not apply. *Atwater v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 566 A.2d 462 (1989).

**Unlawful trade practices.** — The “unlawful trade practices” enumerated in § 28-3904 do not include violations of this section. *Atwater v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 566 A.2d 462 (1989).

**Notice of suspension.** — Subsection (b) of this section, concerning notice of cancellation or refusal to renew, does not require an insurance company to give notice of suspension of insurance under subsection (a)(3). *Johnson v. Cumis Ins. Soc’y, Inc.*, 624 F. Supp. 1170 (D.D.C. 1986).

**More favorable terms permitted but not required.** — As long as the minimum insurance requirements of § 35-2106(c) are met, the household exclusion clause in an insurance policy, limiting further third-party liability above and beyond the statutory minimum, is not inconsistent with this chapter’s remedial purpose. *Smalls v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).

Household exclusion clause contained in automobile liability insurance policy, which stated that no coverage was provided for bodily injury



to any insured or member of insured's family residing in insured's household, was invalid to the extent it conflicted with \$25,000/\$50,000 minimum liability coverage requirement imposed by § 35-2106(c); nevertheless, the exclusion clause was valid to the extent it limited further third-party liability above and beyond the statutory minimum. *Smalls v. State Farm*

*Mut. Auto. Ins. Co.*, App. D.C., 678 A.2d 32 (1996).

**Cited** in *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d 179 (D.C. Cir. 1986); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 520 A.2d 677 (1987); *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991).

## § 35-2110. Special provisions.

(a) *Election of deductible.* — An insurer offering to provide personal injury protection insurance in the District may offer, at appropriately reduced premium rates, a deductible of a specified dollar amount up to the amount prescribed by the Mayor, upon the recommendation of the Commissioner. This deductible may be applicable to all or any specified type of personal injury protection benefit, except that it may not be made applicable to any medical, paramedical, ambulance, or hospital services furnished to a victim on an emergency basis during the 72 hours immediately following an accident.

(b) *Subtraction of certain other benefits.* — All benefits (less reasonably incurred collection costs) that an individual receives or may receive, with respect to an injury, from:

(1) Repealed;

(2) Workers' compensation;

(3) Temporary nonoccupational disability insurance that is required by a state or the District government; and

(4) Repealed;

shall be subtracted in calculating personal injury protection benefits unless the law authorizing or providing for those benefits makes them secondary to or duplicative of personal injury protection benefits.

(c) *Penalty for overdue payment of personal injury protection benefits.* (1) All personal injury protection benefits are payable as loss accrues, subject to receipt by the applicable insurer of reasonable proof of the fact and amount of loss sustained. If personal injury protection benefits are not paid within 30 days after receipt of such proof, the payment is overdue.

(2) An overdue payment of personal injury protection benefits bears interest at the prime rate of interest generally prevailing in the District on the date upon which such payment is first overdue per annum from the date upon which such payment is first overdue.

(3) For purposes of this subsection, payment is made on the date a draft or other valid commercial instrument is placed in the United States mail in a properly addressed and posted envelope or on the date of delivery thereof, whichever is applicable.

(d) *Assignment of rights to future benefits.* — An agreement for the assignment of a right to any personal injury protection benefits payable in the future is void.

(e) *Payment of attorneys fees.* (1) An attorney may receive a reasonable fee for advising and representing a claimant in an action for personal injury protection benefits which are overdue. The fee shall be paid by the applicable

insurer in addition to the amount of the personal injury protection benefits which are overdue and the penalty under subsection (c) of this section if a court finds that the insurer did not promptly pay the amount due.

(2) An insurer may be allowed, by a court, an award of a reasonable sum for a fee for its attorney for the legal cost of defending against a claim that is or was fraudulent in some significant respect. The award may be treated as an offset against the amount of any personal injury protection benefits then or thereafter owing by that insurer to the person making that claim.

(f) *Primacy of personal injury protection.* — Repealed. (Sept. 18, 1982, D.C. Law 4-155, § 11, 29 DCR 3491; Mar. 14, 1985, D.C. Law 5-159, § 13(b), 32 DCR 30; Mar. 4, 1986, D.C. Law 6-96, § 2(j), 32 DCR 7245; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(v), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2111.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a).

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 5-159.** — See note to § 35-2103.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2102.

**Department of Insurance abolished.** — See note to § 35-2102.

**Preliminary finding that accident itself caused injury.** — Nothing in this chapter or in its legislative history demonstrates a legislative intent to compensate a victim without a preliminary finding that the accident, itself, caused the injury in question. *Edmonds v. Stonewall/Dixie Ins. Co.*, 114 WLR 961 (Super. Ct. 1986).

In paragraph (c)(1), the phrase “proof of the fact . . . of loss sustained” can only mean proof of the fact of loss sustained because of the subject accident; thus, the insurer being asked to pay is first entitled to reasonable proof of causality. If, after good faith consideration of that proof, the insurer is not satisfied that the presumed loss resulted from the subject accident, it is not required to pay the benefits in question. *Edmonds v. Stonewall/Dixie Ins. Co.*, 114 WLR 961 (Super. Ct. 1986).

**Workers’ compensation.** — The Workers’ Compensation Act, § 36-301 et seq., does not make benefits paid under workers’ compensation secondary or duplicative of no-fault insurance personal injury protection (PIP) benefits; therefore, PIP benefits must be paid only if the benefits paid under workers’ compensation do not accord an injured individual the full measure of recovery he would receive from PIP benefits. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

Workers’ compensation benefits paid which satisfy in whole or in part the personal injury protection benefits which must be paid under no-fault insurance provisions are effectively personal injury protection payments under § 35-2104, thus, the employer who has paid workers’ compensation benefits that partially or fully satisfy the required personal injury protection benefits required under no-fault insurance provisions, § 35-2101 et seq., may, therefore, obtain reimbursement from the insurer of the liable third party. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

The no-fault insurance provisions serve as the primary statutory scheme governing parties’ rights in situations in which both no-fault and workers’ compensation, § 36-301 et seq., apply, and although the benefits payable under workers’ compensation are primary over no-fault personal injury protection benefits, the remedies under workers’ compensation for an employer to recoup benefits paid from liable third parties are not primary over the remedies set forth in the no-fault provisions, thus, in situations where both no-fault and workers’ compensation apply, an employer may recoup benefits paid under workers’ compensation only through the avenues provided in no-fault. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

Employer of injured plaintiff may not enforce a lien against plaintiff’s civil action recovery for pain and suffering; the employer’s sole remedy for reimbursement for economic losses is against the defendant’s insurer. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

**Failure to pay for injuries caused by uninsured motorists.** — When an insurer fails to pay insurance benefits for injuries caused by uninsured motorists, a beneficiary may recover interest on the overdue benefits and attorneys’ fees incurred in recovering the overdue benefits, but nowhere does the Code provide for a private cause of action against an insurer, based upon the insurer’s bad faith

refusal to pay a claim. *Washington v. GEICO*, 769 F. Supp. 383 (D.D.C. 1991).

**Attorney fees.** — This section makes clear that the sole prerequisite for an attorney fees award is that the insurer did not promptly pay the amount due; thus, as long as appellant's attorneys could establish that benefits were

overdue, any efforts to prove that the insurance company acted in bad faith were superfluous. *Messina v. Nationwide Mut. Ins. Co.*, 998 F.2d 2 (D.C. Cir. 1993).

**Cited in** *Tapscott v. Dairyland Ins. Co.*, 673 F. Supp. 611 (D.D.C. 1987); *Lee v. District of Columbia, App. D.C.*, 559 A.2d 308 (1989).

## § 35-2111. Miscellaneous provisions.

(a) *Statute of limitations.* (1) Except as otherwise provided in this subsection, a civil action for the recovery of any personal injury protection benefits payable under this chapter shall be commenced not later than 3 years after the date of the injury giving rise to entitlement to such benefits.

(2) If an appropriate written notice setting forth the name and address of the victim and the time, place, and nature of the injury is given to the insurer or any of its authorized agents reasonably promptly after the date of the accident resulting in the injury, a civil action may be commenced at any time within 3 years after the date such a notice is given by a person claiming to be entitled to personal injury protection benefits or by a person acting on behalf of a victim. If the applicable insurer makes any payment of benefits for personal injury protection with respect to a particular victim and injury, then a civil action may be commenced at any time within 3 years after the most recent payment.

(b) *Physical or mental examination of victim.* (1) If a person's physical or mental condition is material to any claim that has been made or that may be made for personal injury protection benefits, the person involved shall submit to physical or mental examination by physicians, in accordance with provisions of the policy of insurance pursuant to which a claim has been or may be made. A policy of insurance providing for payment of the benefits required for personal injury protection may include reasonable provisions for physical and mental examination of persons claiming any such benefits.

(2)(A) If requested by the person examined, a copy of every written report concerning an examination under this subsection which is made by an examining physician shall be delivered or mailed to such person without charge.

(B) At least 1 report shall set forth in detail the findings and conclusions of the examining physicians.

(C) Upon request and delivery or mailing, the party causing a person to be examined under this subsection may request the person examined to furnish its representative with a copy of every written report available to that person concerning any examination which is relevant to that person's claim for personal injury protection benefits.

(D) An applicable insurer may request a person claiming personal injury protection benefits to submit the name and address of each physician, medical-care facility, hospital, clinic, rehabilitation center, nursing facility, or other person or institution that has diagnosed or treated the victim for or with respect to the injury claimed and any relevant past injury, as a prerequisite to the payment of benefits under this chapter.



(E) A person shall authorize an insurer to inspect and copy records relevant to such a claim which are prepared or maintained by any physician, hospital, clinic, rehabilitation center, nursing facility, or other person or institution.

(3) A court may make any order which is just in case a person refuses to comply with any provision of paragraph (1) or (2) of this subsection, except that an order shall not be entered directing the arrest of a person for disobeying an order to submit to a physical or mental examination.

(4) Nothing contained in this subsection shall preclude a victim from obtaining treatment by the victim's own physician.

(c) *Good-faith mistake.* (1) Payment of personal injury protection benefits by an insurer in good faith to or for the benefit of a person believed to be entitled thereto discharges the insurer from its obligation to the extent of the amount of such payment, unless such insurer has been notified in writing prior to the payment of the claim of some other person.

(2) If there is doubt about the proper person to receive the benefits involved or the proper apportionment to be made among the persons entitled to benefits or about whether an item of medical or rehabilitation expense was reasonably necessary or whether the charge for an item is reasonable, the insurer, the claimant, or any other interested person may apply to the Superior Court of the District of Columbia for an appropriate order. If an application is made by an insurer before the benefit claimed is overdue, the provisions of § 35-2110(c) and (e) are not applicable with respect to the amount.

(d) *Subrogation.* (1) An insurer shall have a right of reimbursement from any other insurer, based upon a determination of fault, for any personal injury protection benefits paid or obligated to be paid by that insurer as a result of an accident that involved 2 or more motor vehicles, at least 1 of which was of a type other than a passenger motor vehicle.

(2) An insurer which has paid or become obligated to pay personal injury protection benefits in any case not covered by paragraph (1) of this subsection may agree to receive a right of reimbursement from any other insurer with respect to some or all of those benefits.

(3) Entitlement to reimbursement and the amount of any reimbursement under this subsection shall be determined by agreement between any insurers who are involved under paragraph (1) of this subsection or who agree under paragraph (2) of this subsection. If the insurers fail to reach agreement as to entitlement or amount or both, these issues shall be determined by inter-company arbitration in accordance with any applicable agreement between the insurers involved under procedures established by the Commissioner. The determination of any right of reimbursement under this subsection shall not be affected by the provisions of § 35-2105.

(e) *Waiver for taxicabs.* (1) Taxicabs shall be waived from the mandatory minimum insurance requirements of § 35-2106 (except for the provisions of § 35-2109) for 2 years from March 4, 1986. The Mayor shall gradually increase minimum liability insurance requirements for taxicabs during the waiver period, after hearings held in accordance with § 1-1509.

(2) The rate of increase will be determined by the Mayor based upon evidence submitted to the Mayor on the reasonableness of the insurance rate

and liability limit increase in relation to the need to preserve the economic viability of the taxi industry.

(3) The Mayor shall impose the liability limits and rate increases on an annual basis.

(4) Two years from March 4, 1986, the owners and operators of taxis shall be required to obtain mandatory insurance as set forth in § 35-2106.

(5) Nothing in this section shall preclude the owner or operator of a taxi from carrying insurance greater than the required minimum or from carrying at his or her option personal injury protection benefits.

(f) *Rulemaking.* — The Mayor, the Director, or the Commissioner, or each of them, may, in accordance with § 1-1506, issue rules to expeditiously and economically administer this chapter. (Sept. 18, 1982, D.C. Law 4-155, § 12, 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96, § 2(k), 32 DCR 7245; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2102.

**Exemption of taxicabs from certain provisions of Law 4-155.** — See Mayor's Order 83-176, June 30, 1983.

**Transfer of functions.** — See note to § 35-2102.

**Applicability.** — The "taxicab exemption" contained in subsection (e) of this section exempts taxicabs from the insurance requirements of § 35-2103, but does not exempt taxicab drivers from the limitations on civil liability claims imposed by § 35-2105. *Johnson v. Collins*, App. D.C., 516 A.2d 196 (1986).

**Action barred by statute of limitations.** — Where there was no evidence that a party was affirmatively induced to delay bringing a civil action within the limitation period, summary judgment for the insurer on the ground that the action was barred by the statute of limitations was upheld. *Jones v. GEICO*, App. D.C., 621 A.2d 845 (1993).

**Scope of taxicab exemption.** — Subsection (e) of this section applies only to the mandatory insurance provision, § 35-2103; it does not prevent a taxicab owner or driver from claiming benefits under this chapter, nor does it exempt him from the limitations on civil liability set forth in § 35-2105. *Nasaka v. Data Access Sys.*, 602 F. Supp. 761 (D.D.C. 1985); *Arthur v. Avis Rent-A-Car Sys.*, 613 F. Supp. 82 (D.D.C. 1985).

Taxicab exemption in subsection (e) does not exempt taxicab drivers from the chapter's provisions; therefore, the taxicab exemption does not permit taxicab driver to maintain a civil action. *Makanju v. Saunders*, App. D.C., 519 A.2d 703 (1987).

**Preliminary finding that accident itself caused injury.** — Nothing in this chapter or in

its legislative history demonstrates a legislative intent to compensate a victim without a preliminary finding that the accident, itself, caused the injury in question. *Edmonds v. Stonewall/Dixie Ins. Co.*, 114 WLR 961 (Super. Ct. 1986).

**Workers' compensation.** — Workers' compensation benefits paid which satisfy in whole or in part the personal injury protection benefits which must be paid under no-fault insurance provisions are effectively personal injury protection payments under § 35-2104, thus, the employer who has paid workers' compensation benefits that partially or fully satisfy the required personal injury protection benefits required under no-fault insurance provisions may, therefore, obtain reimbursement from the insurer of the liable third party. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

The no-fault insurance provisions serve as the primary statutory scheme governing parties' rights in situations in which both no-fault and workers' compensation, § 36-301 et seq., apply, and although the benefits payable under workers' compensation are primary over no-fault personal injury protection benefits, the remedies under workers' compensation for an employer to recoup benefits paid from liable third parties are not primary over the remedies set forth in the no-fault provisions, thus, in situations where both no-fault and workers' compensation apply, an employer may recoup from benefits paid under workers' compensation only through the avenues provided in no-fault. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

Employer of injured plaintiff may not enforce a lien against plaintiff's civil action recovery for pain and suffering; the employer's sole remedy for reimbursement for economic losses is against the defendant's insurer. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

**Cited in** *Dimond v. District of Columbia*, 618 F. Supp. 519 (D.D.C. 1984), modified, 792 F.2d

179 (D.C. Cir. 1986); *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989); *Colonial Penn Ins. Co. v. Owens*, 728 F. Supp. 798 (D.D.C. 1990).

## § 35-2112. Temporary Motor Vehicle Insurance Review Commission.

Expired.

**Expiration of Temporary Motor Vehicle Insurance Review Commission.** — Pursuant to subsection (i) of former § 35-2112, the Temporary Motor Vehicle Insurance Review Commission was to expire 3 years after March 4, 1986. The Temporary Motor Vehicle Insurance Review Commission is deemed to have expired on March 4, 1989.

## § 35-2113. Penalties; adjudications.

(a) A person is guilty of an offense if that person:

(1) Makes any false material statement with respect to his or her compliance with the obligation to maintain required insurance;

(2) Is the owner of a motor vehicle that is required to be registered or obtain a reciprocity sticker in the District and required insurance is not in effect with respect to that motor vehicle;

(3) Is the owner of a motor vehicle and knowingly operates or permits that motor vehicle to be operated in the District without required insurance being in effect with respect to that motor vehicle;

(4) Is the operator of a motor vehicle owned by another person who operates that motor vehicle in the District knowing or having reason to believe that required insurance is not in effect with respect to that motor vehicle;

(5) Operates a motor vehicle as to which the certificate of registration or reciprocity sticker has been suspended pursuant to § 35-2103(d)(2);

(6) Fails or refuses to return or give a registration certificate, or reciprocity sticker, tags, or a license to the Department, an authorized agent of the Department, or to a law-enforcement officer;

(7) Fails or refuses to present evidence that required insurance is in effect with respect to a motor vehicle operated by that person upon demand by a law-enforcement officer; or

(8) Violates any other provision of this chapter.

(b)(1) A person who commits an offense under subsection (a)(3), (4), or (7) of this section shall be subject both to the regulatory scheme established in § 35-2103(d)(2) and to a civil fine of not less than \$300 or more than \$500, or a license suspension for up to 30 days, or both, for the first offense, and not less than \$500 or more than \$1,000, or a license suspension for up to 60 days, or both, for the second and each subsequent offense pursuant to §§ 40-604(b) and 40-605.

(2)(A) In addition to being subject to the regulatory scheme established in § 35-2103(d)(2), for a person who commits an offense under subsection (a) (2) of this section a civil fine of \$500 for the 1st violation and \$1000 for the 2nd and subsequent violations, with applicable penalties and fees, may be imposed pursuant to Chapter 6 of Title 40.

(B) A person shall not be subject to a fine pursuant to this paragraph if the person believed, in good faith, that the person contracted for the required



insurance coverage with a company which subsequently went out of business or otherwise failed to comply with this law.

(c) In addition to the penalties provided in subsection (b)(1) of this section, a person who commits an offense under subsection (a)(1), (5), (6), or (8) of this section shall upon conviction also be subject to imprisonment for not more than 30 days for the 1st offense, and imprisonment for not more than 90 days for the 2nd and subsequent offenses. (Sept. 18, 1982, D.C. Law 4-155, § 15, 29 DCR 3491; Mar. 10, 1983, D.C. Law 4-199, § 3, 30 DCR 119; Sept. 27, 1985, D.C. Law 6-38, § 2, 32 DCR 4307; Mar. 4, 1986, D.C. Law 6-96, § 2(m), 32 DCR 7245; Mar. 23, 1995, D.C. Law 10-253, § 103, 42 DCR 721; Sept. 26, 1995, D.C. Law 11-52, § 103, 42 DCR 3684.)

**Cross references.** — As to false statement and perjury, see § 22-2514.

As to unauthorized use of motor vehicles, see § 22-3815.

As to required insurance under this chapter, see § 35-2103.

As to hearing examiners and traffic adjudication, see § 40-604.

As to monetary sanctions and traffic adjudication, see § 40-605.

**Section references.** — This section is referred to in § 35-2103.

**Effect of amendments.** — D.C. Law 11-52, in (b)(1), substituted “\$300 or more than \$500” for “\$100 or more than \$300” and substituted “\$500 or more than \$1,000” for “\$300 or more than \$500.”

**Temporary amendment of section.** — Section 103 of D.C. Law 10-253, in (b)(1), substituted “\$300 or more than \$500” for “\$100 or more than \$300” and substituted “\$500 or more than \$1,000” for “\$300 or more than \$500.”

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 103 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

**Legislative history of Law 4-155.** — See note to § 35-2101.

**Legislative history of Law 4-199.** — Law 4-199, the “Christmas Tree Act of 1982,” was introduced in Council and assigned Bill No. 4-427, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was as-

signed Act No. 4-283 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-38.** — Law 6-38, the “District of Columbia Traffic Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-12, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 11, 1985, and June 25, 1985, respectively. Signed by the Mayor on July 11, 1985, it was assigned Act No. 6-56 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-96.** — See note to § 35-2114.

**Legislative history of Law 10-253.** — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1994,” was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Approved without the signature of the Mayor on January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

**Legislative history of Law 11-52.** — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

**Failure to maintain insurance.** — It is unnecessary to be involved in an accident to be prosecuted for violating the No-Fault Act; rather, the failure to maintain mandatory insurance, in and of itself, is sufficient. *Monroe v. Foreman*, App. D.C., 540 A.2d 736 (1988).

**§ 35-2114. Uninsured Motorist Fund.**

(a) A fund is established in the District, to be known as the Uninsured Motorist Fund ("Fund"), for the purpose of awarding compensation to a victim of an accident who sustains injury therefrom and would not otherwise be compensated for his or her loss. Assessment shall be made, on a fair and equitable basis, among all insurers in accordance with projections of the District government as to costs required for reasonable funding and administration of the Fund. The Fund shall be classified by the Mayor pursuant to § 47-375. The Fund shall be administered by the Mayor.

(1) All compensation awarded under this section shall be paid from the monies in the Fund.

(2) Monies in the Fund shall consist of, and there shall be deposited in the District of Columbia treasury to the credit of the Fund, monies received pursuant to subsection (a) of this section.

(b) A victim is eligible for compensation under this section subject to the following conditions:

(1) The accident upon which the claim is based was reported to the Mayor not more than 45 days after the accident occurred, except that this requirement may be waived for good cause shown.

(2) The victim files a claim on a form supplied by the Mayor and submits all required information and documents within 180 days after the accident, except that this requirement may be extended for good cause shown or if the victim is still undergoing medical treatment for injuries relating to the accident.

(3) The victim has suffered loss in an amount exceeding \$100 as a result of the accident upon which the claim is based.

(4) The victim shall be eligible if the only identifiable insurer or insurers, who would otherwise be obligated to compensate the victim, are financially unable to fulfill their obligations.

(c) The victim shall not be eligible if the victim is at fault, is an insured, owns a registered motor vehicle, or operated a motor vehicle in the accident upon which the claim is based.

(d) Claims shall be processed and maintained in the order of their filing.

(e) The amounts of compensation awarded shall be equal to the amount of the victim's loss, decreased by all amounts received by or available to the victim from collateral sources. No compensation shall be awarded pursuant to this section in an amount exceeding \$100,000 in medical and rehabilitative expenses, \$24,000 in wage loss, and \$4,000 in funeral expenses. No final award of compensation shall be made unless the Fund contains sufficient monies to pay the award.

(f) In addition to the amount of compensation awarded to a successful claimant, a reasonable fee may be awarded for any professional assistance required in connection with any claim under this section. The fee may not exceed 10% of the amount of the claimant's award or \$1,000, whichever is less.

(g)(1) Nothing in this section shall deprive the claimant or the claimant's successors in interest of the right to recover damages from the negligent party.

(2) The District of Columbia shall be subrogated to the claimant's right against the negligent party to the extent of any compensation awarded under this section. The District of Columbia may initiate a suit against the negligent party for damages. The District of Columbia shall be notified by the plaintiff of the institution of any suit against the negligent party for damages. The District of Columbia shall have a lien on any recovery made from such a suit. All monies recovered through subrogation shall be deposited in the District of Columbia treasury to the credit of the Uninsured Motorist Fund.

(h) Any agreement by a person to waive, release, or commute his or her rights under this section is void. Compensation awarded under this section is exempt from execution, attachment, or other remedy for recovery or collection of debt, except for expenses resulting from injury or death which is the basis for the claim.

(i) Any person who knowingly submits false information in support of a claim under this section or knowingly suppresses relevant information concerning a claim under this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$2,000 or imprisoned for not more than 1 year, or both. A person convicted of an offense under this subsection shall forfeit any compensation under this section and shall reimburse and repay to the District of Columbia any compensation received pursuant to this section.

(j)(1) The Mayor shall administer the provisions of this section, and shall issue rules necessary to carry out the provisions and purposes of this section.

(2) The Mayor shall report annually to the Council of the District of Columbia on the status and activities of the Uninsured Motorist Fund. The report shall include, but is not limited to, the following information: Total number of claims filed, the number of claims approved and the amount of each award, the number of claims denied, the number of cases in which the claimant used professional assistance, the cumulative total of professional fees paid, the number of cases pending, and the future liability of the Uninsured Motorist Fund. (Sept. 18, 1982, D.C. Law 4-155, § 9a, as added Mar. 4, 1986, D.C. Law 6-96, § 2(h), 32 DCR 7245.)

**Legislative history of Law 6-96.** — Law 6-96, the "Compulsory/No-Fault Motor Vehicle Insurance Act of 1982 Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-249, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 22, 1985, it was assigned Act No. 6-104 and transmitted to both Houses of Congress for its review.

**Ownership of vehicle.** — Since wife was not the vehicle's owner for the purpose of insurance or registration, she should not have been treated as its owner for purposes of the uninsured motorist statute. *Tesfamariam v. District*

of Columbia Dep't of Consumer & Regulatory Affairs, Ins. Admin., App. D.C., 645 A.2d 1105 (1994).

**Sum for pain and suffering is collateral source.** — A sum, designated as being solely for pain and suffering, received by petitioner in settlement of a suit against the uninsured motorist who caused her injuries is a "collateral source" that reduces the amount of the entitlement available to her from the Fund. *Daniel v. District of Columbia Ins. Admin.*, App. D.C., 639 A.2d 590 (1994).

**Cited in** *Walker v. District of Columbia*, 117 WLR 1397 (Super. Ct. 1989); *Coates v. Washington Metro. Area Transit Auth.*, 742 F. Supp. 10 (D.D.C. 1990).



## CHAPTER 22. MEDICARE SUPPLEMENT INSURANCE.

Sec.

35-2201 to 35-2209. [Repealed].

**§§ 35-2201 to 35-2209. Definitions; applicability of chapter; policy definitions and terms; prohibited policy provisions; notice of free examination; minimum benefit standards; loss ratio standards; required disclosure provisions; requirements for replacement.**

Repealed. Mar. 8, 1991, D.C. Law 8-244, § 12, 38 DCR 360.

**Temporary repeal of chapter.** — Section 12 of D.C. Law 8-68, effective February 22, 1990, and section 12 of D.C. Law 8-218, effective March 6, 1991, repealed this chapter.

Section 13(b) of D.C. Law 8-68 provided that the act shall expire on the 225th day of its having taken effect.

Section 13(b) of D.C. Law 8-218 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Medicare Catastrophic Coverage Repeal Minimum Guidelines Act of 1990, whichever occurs first.

**Legislative history of Law 8-68.** — Law 8-68, the “Medicare Supplement Insurance Minimum Standards Temporary Act of 1989,” was introduced in Council and assigned Bill No. 8-398. The Bill was adopted on first and second readings on September 26, 1989, and October 10, 1989, respectively. Signed by the Mayor on October 27, 1989, it was assigned Act No. 8-103 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-218.** — Law 8-218, the “Medicare Catastrophic Coverage Repeal Minimum Guidelines Temporary Act of 1990,” was introduced in Council and assigned Bill No. 8-718. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-299 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-244.** — Law 8-244, the “Medicare Catastrophic Coverage Repeal Minimum Guidelines Act of 1990,” was introduced in Council and assigned Bill No. 8-241, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-327 and transmitted to both Houses of Congress for its review.

## CHAPTER 23. DRUG ABUSE, ALCOHOL ABUSE, AND MENTAL ILLNESS INSURANCE COVERAGE.

Sec.

35-2301. Definitions.

35-2302. Coverage.

35-2303. Drug abuse and alcohol abuse benefits.

35-2304. Mental illness benefits.

35-2305. Nondiscrimination.

35-2306. Certification of nonhospital residen-

Sec.

tial facilities and outpatient treatment facilities.

35-2307. Preservation of certain benefits.

35-2308. Notification of coverage and benefits.

35-2309. Filing and rate requirements.

35-2310. Health maintenance organizations.

35-2311. Duties of Mayor.

### § 35-2301. Definitions.

For the purposes of this chapter, the term:

(1) "Alcohol abuse" means any pattern of pathological use of alcohol that causes impairment in social or occupational functioning, or that produces physiological dependency evidenced by physical tolerance or by physical symptoms when it is withdrawn.

(1A) "Advanced practice registered nurse" means a person licensed as a registered nurse and certified as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revisions Act of 1985 Amendment Act of 1994 or by the state or territory where the person practices as an advanced practice registered nurse.

(2) "Clinically significant" means sufficient to impair substantially a person's judgment, behavior, capacity to recognize, or ability to cope with the ordinary demands of life.

(2A) "Commissioner" means the Commissioner of Insurance and Securities.

(3) "Council" means the Council of the District of Columbia.

(4) "Covered benefits" means the health-care services or treatment available to an insured party under a health insurance policy or contract for which the insurer will pay part or all of the cost, or the health-care services or treatment available to a member of a health maintenance organization as part of the membership contract.

(5) "District" means the District of Columbia.

(6) "Drug abuse" means any pattern of pathological use of a drug that causes impairment in social or occupational functioning, or that produces physiological dependency evidenced by physical tolerance or by physical symptoms when it is withdrawn.

(7) "Health maintenance organization" means a public or private organization that is a qualifying health maintenance organization under federal regulations, or has been determined to be a health maintenance organization pursuant to regulations adopted by the State Health Planning and Development Agency of the District.

(8) "Hospital" means a facility licensed as a hospital by the District or by any state or territory of the United States or operated by the District, any state or territory, or the United States.

(9) "Inpatient services" means therapeutic services that are medically or psychologically necessary and that are provided in a hospital or a nonhospital

residential facility to patients admitted to the hospital or nonhospital residential facility.

(10) “Insurer” means any individual, partnership, corporation, association, fraternal benefit association, nonprofit health service plan, or other business entity that issues, amends, or renews group hospital or major medical insurance policies or contracts in the District. The term “insurer” shall include Group Hospitalization and Medical Services, Incorporated. For the purposes of § 35-2302(g), the term includes any entity that issues, amends, or renews individual hospital or major medical insurance policies or contracts in the District.

(11) “Mayor” means the Mayor of the District of Columbia.

(12) “Medically or psychologically necessary” means essential for the treatment of drug abuse, alcohol abuse, or mental illness, as determined by a physician, psychologist, or social worker.

(13) “Mental illness” means any psychiatric disease identified in the most recent edition of the International Classification of Diseases or of the American Psychiatric Association Diagnostic and Statistical Manual.

(14) “Nonhospital residential facility” means a facility certified by the District or by any state or territory of the United States as a qualified nonhospital provider of treatment for drug abuse, alcohol abuse, mental illness, or any combination of these, in a residential setting. The term “nonhospital residential facility” includes any facility operated by the District, any state or territory, or the United States to provide these services in a residential setting.

(15) “Outpatient services” means therapeutic services that are medically or psychologically necessary and that are provided to a patient according to an individualized treatment plan that does not require the patient’s admission to a hospital or a nonhospital residential facility. The term “outpatient services” refers to services that may be provided in a hospital, a nonhospital residential facility, an outpatient treatment facility, or the office of a licensed physician, psychologist, or social worker.

(16) “Outpatient treatment facility” means a clinic, counseling center, or other similar location that is certified by the District or by any state or territory as a qualified provider of outpatient services for the treatment of drug abuse, alcohol abuse, or mental illness. The term “outpatient treatment facility” includes any facility operated by the District, any state or territory, or the United States to provide these services on an outpatient basis.

(17) “Peer review” means a system based on written procedures and formally established within the professions of medicine or any of its specialties, psychology, or social work in which a committee of licensed practitioners of the profession reviews another practitioner’s diagnosis and treatment in a specific case and reaches conclusions and recommendations concerning the accuracy of the diagnosis, and the necessity, appropriateness, and effectiveness of the treatment provided and proposed by the practitioner compared to alternative treatments. For the purposes of § 35-2310, the term “peer review” shall also mean the professional utilization procedure or any similar procedure employed by health maintenance organizations.



(18) "Physician" means a person licensed to practice medicine by the District pursuant to the District of Columbia Health Occupations Revision Act of 1985 or by the state or territory where the person practices medicine.

(19) "Psychologist" means a person licensed to practice psychology by the District pursuant to the District of Columbia Health Occupations Revision Act of 1985 or by the state or territory where the person practices psychology.

(20) "Social worker" means a person licensed as an independent clinical social worker by the District pursuant to § 2-3308.4, or who is licensed to practice social work with authority to engage in the independent practice of psychotherapy by the state or territory where the person practices social work.

(21) [Repealed].

(22) "Supplemental benefit" means health insurance coverage provided by the District to its employees in addition to the coverage provided through the Federal Employees Health Benefits Plan pursuant to § 1-622.1. (Feb. 28, 1987, D.C. Law 6-195, § 2, 34 DCR 491; Mar. 23, 1995, D.C. Law 10-247, § 3, 42 DCR 457; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(w), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 10-247 inserted (1A).

D.C. Law 11- (Act 11-524) inserted (2A); and repealed (21).

**Legislative history of Law 6-195.** — Law 6-195, the "Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Act of 1986," was introduced in Council and assigned Bill No. 6-195, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first, amended first, and second readings on November 5, 1986, November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-254 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-247.** — Law 10-247, the "Health Occupations Revision Act of 1985 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-598, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Vetoed by the Mayor on December 28, 1994, Council overrode the veto on January 17, 1995, and the Bill was assigned Act No. 10-394 and transmitted to both Houses of Congress for its review. D.C. Law 10-247 became effective on March 23, 1995.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996,

and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**References in text.** — The "District of Columbia Health Occupations Revision Act of 1985," referred to in paragraphs (18) and (19), is D.C. Law 6-99.

The "District of Columbia Health Occupations Revision Act of 1985 Amendment Act of 1994," referred to in (1A), is D.C. Law 10-247, which is codified primarily throughout Title 2, Chapter 33.

**Department of Insurance abolished.** — The Department of Insurance, including the Superintendent, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 43, dated June 23, 1953, as amended, established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Order provided for the organization of the Department, abolished the previously existing Department of Insurance, and provided that all functions and positions of the previous Department would be transferred to the new Department of Insurance, including the duties, powers, and authorities of all officers and employees; and that all personnel, property, records and unexpended balances relating to the functions and positions transferred would also be transferred to the new Department. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan

No. 3 of 1967. The functions of the Superintendent of Insurance were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983. Pursuant to the provisions of D.C. Law 11- (Act 11-524), the Department of Insurance and Securities Regulation was estab-

lished and the duties of the Superintendent of Insurance and the Insurance Administration were assumed by the Commissioner of Insurance and Securities, and the Insurance Administration in the Department of Consumer and Regulatory Affairs was abolished.

### § 35-2302. Coverage.

(a) All group health insurance policies providing coverage on an expenses-incurred basis, and group service or indemnity-type contracts issued by a nonprofit health service plan shall provide coverage for the medical and psychological treatment of drug abuse, alcohol abuse, and mental illness.

(b)(1) The requirements of this chapter shall apply to:

(A) All individual subscriber contracts and group certificates issued or delivered in the District by Group Hospitalization and Medical Services, Incorporated;

(B) All for-profit as well as not-for-profit indemnity type health insurers issuing or delivering individual indemnity type accident and sickness health insurance policies and group certificates in the District; and

(C) Health insurance certificates, except those described in paragraph (2) of this subsection, that are delivered within the District from group health insurance policies which are sold outside the District.

(2) The requirements of this chapter shall not apply to Medicare supplement policies, accident-only policies, dread disease policies, student accident policies, nursing home policies, and home health care policies.

(c) Covered benefits for drug abuse, alcohol abuse, and mental illness in insurance policies and contracts subject to this chapter shall be limited to inpatient, residential, and outpatient services certified as necessary by a physician, psychologist, advanced practice registered nurse, or social worker.

(d) Before an insured party may qualify to receive benefits under this chapter, a physician, psychologist, advanced practice registered nurse, or social worker shall certify that the individual is suffering from drug abuse, alcohol abuse, or mental illness and prescribe appropriate treatment, which may include referral to other treatment providers.

(e) All drug abuse, alcohol abuse, and mental illness treatment or services eligible for health insurance coverage shall be subject to peer review procedures. These procedures may be initiated by an insurer in the course of reviewing claims for payment.

(f) This chapter shall apply only to group health insurance policies or contracts issued in the District to cover individuals who are residents of, or employed in, the District.

(g) All individual subscriber contracts and policies shall offer coverage for the medical and psychological treatment of drug abuse, alcohol abuse, and mental illness. Coverage shall be offered for at least the minimum levels set forth in §§ 35-2303 and 35-2304.

(h) Group health insurance policies or contracts that are the result of collective bargaining between a legally-certified union and the employer shall

be required to include coverage for inpatient and outpatient treatment of drug abuse, alcohol abuse, and mental illness. The minimum levels of coverage set forth in §§ 35-2303 and 35-2304 shall not apply to those group health insurance policies or contracts until 5 years from February 28, 1987, unless the Mayor requests the Council to extend the exemption to a time certain and the Council, by resolution, approves the extension. (Feb. 28, 1987, D.C. Law 6-195, § 3, 34 DCR 491; Apr. 30, 1988, D.C. Law 7-104, § 21, 35 DCR 147; Mar. 16, 1993, D.C. Law 9-192, § 2(a), (b), 39 DCR 9007; Mar. 23, 1995, D.C. Law 10-247, § 3, 42 DCR 457.)

**Section references.** — This section is referred to in §§ 35-2301, 35-2303, 35-2304, and 35-2310.

**Effect of amendments.** — D.C. Law 10-247 rewrote (c); and inserted “advanced practice registered nurse” in (d).

**Legislative history of Law 6-195.** — See note to § 35-2301.

**Legislative history of Law 7-104.** — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-192.** — Law 9-192, the “Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-310, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-313 and transmitted to both Houses of Congress for its review. D.C. Law 9-192 became effective on March 16, 1993.

**Legislative history of Law 10-247.** — See note to § 35-2301.

## § 35-2303. Drug abuse and alcohol abuse benefits.

(a) Covered benefits for services set forth in this section shall be limited to coverage of treatment of clinically significant substance use disorders identified in the most recent edition of the International Classification of Diseases or of the Diagnostic and Statistical Manual of the American Psychiatric Association.

(b)(1) The process whereby a person who is intoxicated by or dependent on drugs or alcohol or both is assisted through the period of time necessary to eliminate the intoxicating agent from the body, while keeping the physiological risk to the patient at a minimum, shall be a covered benefit.

(2) Treatment under this subsection shall be covered pursuant to § 35-2302 for a minimum of 12 days annually.

(c)(1) Additional treatment as a covered benefit under this chapter shall be provided by a hospital, a nonhospital residential facility, an outpatient treatment facility, a physician, a psychologist, an advanced practice registered nurse, or a social worker, and shall include inpatient services, outpatient services, or any combination of these, certified as necessary by a physician, psychologist, advanced practice registered nurse, or social worker.

(2) Treatment under this subsection shall be covered pursuant to § 35-2302 for a minimum of 28 days per year for inpatient or residential care in a hospital or nonhospital residential facility, and for a minimum of 30 outpatient visits per year.



(d) Treatment regimens which include psychiatric, psychological, and other prescribed interventions shall be a covered benefit. (Feb. 28, 1987, D.C. Law 6-195, § 4, 34 DCR 491; Mar. 23, 1995, D.C. Law 10-247, § 3, 42 DCR 457.)

**Section references.** — This section is referred to in §§ 35-2302, 35-2306, and 35-2310.

**Effect of amendments.** — D.C. Law 10-247 rewrote (c)(1).

**Legislative history of Law 6-195.** — See note to § 35-2301.

**Legislative history of Law 10-247.** — See note to § 35-2301.

## § 35-2304. Mental illness benefits.

(a) Covered benefits for services set forth in this section shall be limited to coverage of treatment of clinically significant mental illnesses identified in the most recent edition of the International Classification of Diseases or of the Diagnostic and Statistical Manual of the American Psychiatric Association.

(b) Treatment under this section shall be covered pursuant to § 35-2302 for a minimum of 45 days per year for inpatient or residential care in a hospital or nonhospital residential facility, and at a minimum rate of 75% for the first 40 outpatient visits per year and at a minimum rate of 60% for any outpatient visits thereafter for that year. (Feb. 28, 1987, D.C. Law 6-195, § 5, 34 DCR 491.)

**Section references.** — This section is referred to in §§ 35-2302, 35-2305, 35-2306, and 35-2310.

**Legislative history of Law 6-195.** — See note to § 35-2301.

## § 35-2305. Nondiscrimination.

(a) Methods of determining levels of payment or reimbursement for services, or for the type of facility charge eligible for payment or reimbursement pursuant to this chapter, shall be consistent with those for physical illnesses in general and shall take into consideration usual, customary, and reasonable charges for those services. Except as otherwise provided in § 35-2304(b), deductible or copayment plans, and limits on total amounts payable to an individual in a calendar year or lifetime payment limits may be applied; provided, however, that the inpatient and outpatient benefits set forth in § 35-2304 shall be provided with a lifetime payment limit of not less than \$80,000 or one third of the lifetime maximum for physical illness, whichever is greater.

(b) Nothing in this section shall be construed as requiring health maintenance organizations to provide any greater level of covered benefits than the level required of insurers. (Feb. 28, 1987, D.C. Law 6-195, § 6, 34 DCR 491; Mar. 16, 1993, D.C. Law 9-192, § 2(c), 39 DCR 9007.)

**Legislative history of Law 6-195.** — See note to § 35-2301.

**Legislative history of Law 9-192.** — See note to § 35-2302.

### § 35-2306. Certification of nonhospital residential facilities and outpatient treatment facilities.

(a) The Mayor shall certify qualifying nonhospital residential facilities and outpatient treatment facilities in the District in accordance with rules issued pursuant to § 35-2311.

(b) Each certification issued by the Mayor shall state whether the facility is certified as a provider of treatment for drug abuse, alcohol abuse, mental illness, or a combination of these that shall be specified.

(c) To qualify for certification, a nonhospital residential facility or outpatient treatment facility shall demonstrate that:

(1) It offers an organized program for the treatment of drug abuse, alcohol abuse, mental illness, or any combination of these;

(2) It operates under the day-to-day supervision of an individual with demonstrable training and experience in the treatment of drug abuse, alcohol abuse, or mental illness;

(3) It employs sufficient numbers of professional staff members to deliver adequately the services offered to its patient caseload; and

(4) It offers and has the capacity to provide services for the durations specified in §§ 35-2303 and 35-2304.

(d) Nothing in this section shall be construed as superseding the requirements of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983. (Feb. 28, 1987, D.C. Law 6-195, § 7, 34 DCR 491.)

**Section references.** — This section is referred to in § 32-1604.

**Legislative history of Law 6-195.** — See note to § 35-2301.

**References in text.** — The “Health-Care and Community Residence Facility, Hospice

and Home Care Licensure Act of 1983,” referred to in subsection (d), is D.C. Law 5-48.

**Delegation of authority pursuant to D.C. Law 6-195, “Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Act of 1986.”** — See Mayor’s Order 88-50, February 25, 1988.

### § 35-2307. Preservation of certain benefits.

Nothing in this chapter shall serve to diminish the benefits of any insured person or prevent the offering or acceptance of benefits that exceed the minimum benefits required by this chapter. (Feb. 28, 1987, D.C. Law 6-195, § 8, 34 DCR 491.)

**Legislative history of Law 6-195.** — See note to § 35-2301.

### § 35-2308. Notification of coverage and benefits.

All individual and group health insurance policies shall contain statements, in easily readable type and in easily understandable language, approved by the Commissioner, to inform policyholders and beneficiaries of the coverage and benefits provided or offered pursuant to this chapter. (Feb. 28, 1987, D.C. Law 6-195, § 9, 34 DCR 491; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(w), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2310.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 6-195.** — See note to § 35-2301.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2301.

## § 35-2309. Filing and rate requirements.

(a)(1) Notwithstanding the provisions of any other law, any insurer that issues health insurance policies or contracts in the District shall file with the Commissioner all rates and rating plans, rules, and classifications that it proposes to use in providing or offering the coverage required by this chapter.

(2) Each insurer shall initially file the documents required by this section no later than 120 days after the effective date of rules issued pursuant to § 35-2311 and shall thereafter file any changes in rates and rating plans, rules, and classifications related to the coverage required by this chapter in a timely manner in accordance with rules issued by the Commissioner.

(3) The Commissioner shall make the documents filed pursuant to this section available for public inspection during normal business hours.

(b)(1) The rates and charges filed pursuant to subsection (a) of this section shall be subject to review by the Commissioner for a period of 90 calendar days from the date of filing. If after 90 days the Commissioner has not made a final determination on the final rates or charges proposed, the insurer may begin charging the proposed rate. The rates and charges shall remain in effect unless and until, in accordance with the provisions of this section, changed by the insurer or disapproved by the Commissioner.

(2) Except as otherwise provided in § 35-2310(d)(2), rates and charges for the coverage required by this chapter shall not be excessive and shall be reasonably related to the cost of providing the coverage based on the following factors:

(A) Past and prospective experience within the covered group, or within the geographic region of the District or other regions, concerning the proportion of beneficiaries who use the coverage and the average duration of use;

(B) Usual, customary, and reasonable charges by providers of treatment for drug abuse, alcohol abuse, and mental illness within the District or other regions; and

(C) Past and prospective experience within the covered group, or within the geographic region of the District or other regions, concerning claims filed or services required for physical diseases and disorders by beneficiaries who obtain treatment for drug abuse, alcohol abuse, or mental illness or whose household includes an individual who has obtained treatment for drug abuse, alcohol abuse, or mental illness.

(3) Rates and charges for the coverage required by this chapter may include a reasonable margin for underwriting profit and contingencies.

(c)(1) The Commissioner shall review all rates and rating plans, rules, and classifications filed pursuant to this section to determine compliance with this chapter.

(2) The Commissioner may, following a hearing pursuant to § 1-1509, order adjustments in rates and rating plans, rules, and classifications that the



Commissioner determines to be excessive or otherwise not in compliance with this chapter. The Commissioner may order the insurer to refund to its policyholders a sum equal to the amount of the rate or charge determined to be excessive.

(d) Nothing in this section shall be construed to require uniformity in rates, classifications, rating plans, or charges. (Feb. 28, 1987, D.C. Law 6-195, § 10, 34 DCR 491; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(w), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2310.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 6-195.** — See note to § 35-2301.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2301.

**Department of Insurance abolished.** — See note to § 35-2301.

## § 35-2310. Health maintenance organizations.

(a) The requirements of this chapter shall apply to health maintenance organizations 5 years from February 28, 1987, unless the Mayor requests the Council to extend the exemption to a time certain and the Council, by resolution, approves the extension.

(b) Upon becoming subject to the requirements of this chapter, each health maintenance organization shall:

(1) Provide to its members the coverage and benefits required by §§ 35-2302, 35-2303, and 35-2304;

(2) Ensure that deductible or copayment plans, durational limits, and methods of determination adopted with respect to coverage of the benefits required by §§ 35-2302, 35-2303, and 35-2304 result in coverage that is determined by the Commissioner to be at least equivalent in actuarial value to the average actuarial value of the plans provided by the insurer with the largest number of enrollees in the District; and

(3) Provide the notification of coverage and benefits required by § 35-2308.

(c) Each health maintenance organization may provide the treatment required by §§ 35-2303 and 35-2304 directly by its staff or by referring its members to a hospital or other treatment facility that provides those services under a contract or agreement with the health maintenance organization. Nothing in this chapter shall require the alteration of any terms and conditions of the health maintenance organization membership contract relating to prior approval by the health maintenance organization for treatment provided to its members by other treatment facilities.

(d)(1) Each health maintenance organization, within 120 days after becoming subject to the requirements of this chapter, shall file with the Commissioner the membership contracts it proposes to use, identifying its charges for all services and the portion of charges attributable to the services required by this chapter.

(2) The provisions of § 35-2309, except for subsection (b)(2) of this section, shall apply thereafter to the membership contracts and charges filed and

implemented by health maintenance organizations. Rates and charges for the coverage required by this chapter shall not be excessive and shall be reasonably related to the cost of providing the coverage. (Feb. 28, 1987, D.C. Law 6-195, § 11, 34 DCR 491; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(w), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2301, 35-2309, and 35-2311.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in (b)(2) and (d)(1).

**Legislative history of Law 6-195.** — See note to § 35-2301.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2301.

## § 35-2311. Duties of Mayor.

(a) The Mayor shall, within 120 days from February 28, 1987, issue rules to implement all sections of this chapter except § 35-2310. The Mayor shall issue rules to implement § 35-2310 no later than 5 years from February 28, 1987.

(b) The Mayor shall provide the coverage and benefits set forth in this chapter to employees of the District and their dependents who are insured through the District of Columbia Employees' Health Benefits Program. For District employees and their dependents who are insured through the Federal Employees' Health Benefits Program, the Mayor shall provide supplemental coverage and benefits that comply with the requirements of this chapter no later than February 28, 1994. (Feb. 28, 1987, D.C. Law 6-195, § 12, 34 DCR 491; Mar. 16, 1993, D.C. Law 9-192, § 2(d), 39 DCR 9007.)

**Section references.** — This section is referred to in §§ 35-2302, 35-2306, and 35-2309.

**Legislative history of Law 6-195.** — See note to § 35-2301.

**Legislative history of Law 9-192.** — See note to § 35-2302.

**Delegation of authority pursuant to D.C. Law 6-195, "Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Act of 1986."**

— See Mayor's Order 88-50, February 25, 1988.

## CHAPTER 23A. HEALTH INSURANCE CLAIM FORMS.

Sec.

35-2331. Standardized uniform health insurance claim forms.

**§ 35-2331. Standardized uniform health insurance claim forms.**

(a) The HCFA 1500 and UB 92 claims forms, or their successor forms as they may be amended from time to time, shall serve as the official health insurance claims forms of the District of Columbia for hospitals and other medical providers and governmental agencies, and such forms shall be used and exclusively accepted by all insurers, including health maintenance organizations and other forms of managed care, transacting health insurance, providing medical insurance through a personal automobile policy, workers' compensation, or otherwise providing coverage for medical services, and by all hospitals, medical providers, and government agencies in the District of Columbia that require insurance claim forms for their records.

(b) The claims forms specified in subsection (a) of this section may be modified as necessary to accommodate the transmission and administration of claims by electronic means. (Feb. 27, 1996, D.C. Law 11-89, § 2, 42 DCR 7153.)

**Legislative history of Law 11-89.** — Law 11-89, the "Uniform Health Insurance Claim Forms Act of 1995," was introduced in Council and assigned Bill No. 11-44, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-172 and transmitted to both Houses of Congress for its review. D.C. Law 11-89 became effective on February 27, 1996.



CHAPTER 24. CANCER PREVENTION.

Sec.

35-2401. Definitions.

35-2402. Payable benefits.

Sec.

35-2403. Applicability.

§ 35-2401. Definitions.

For the purposes of this chapter, the term:

(1) "Baseline mammogram" means a screening mammogram that is used as a comparison for future examinations.

(2) "Screening mammogram" means a low dose x-ray used to visualize the internal structure of the breast.

(3) "Cytologic screening" means a pap test to detect cervical cancer through the simple microscopic examination of cells scraped from the surface of the cervix.

(4) "Health insurance policy" means any health insurance policy that provides for the payment of indemnity on account of sickness and is offered by Group Hospitalization and Medical Services, Incorporated, a health insurance company, a health self-insured, an insurance purchasing trust, or any health maintenance organization that offers insurance benefits or health plans in the District of Columbia ("District"). The term "health insurance policy" shall not include a hospital indemnity policy, a disability insurance policy, an accident only policy, or a student accident policy. (Mar. 7, 1991, D.C. Law 8-225, § 2, 38 DCR 217.)

**Legislative history of Law 8-225.** — Law 8-225, the "District of Columbia Cancer Prevention Act of 1990," was introduced in Council and assigned Bill No. 8-367, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-308 and transmitted to both Houses of Congress for its review.

§ 35-2402. Payable benefits.

(a) Any individual or group health insurance policy or service, including Medicaid, shall provide health insurance benefits to cover:

(1) A baseline mammogram for women; and

(2) An annual screening mammogram for women.

(b) Any individual or group health insurance policy or service, including Medicaid, shall provide health insurance benefits to cover:

(1) Annual cervical cytologic screening for women; and

(2) Cervical cytologic screening for women upon certification by an attending physician that the test is medically necessary.

(c) Benefits provided in accordance with this section shall not be subject to an annual or coinsurance deductible. (Mar. 7, 1991, D.C. Law 8-225, § 3, 38 DCR 217.)

**Legislative history of Law 8-225.** — See note to § 35-2401.

**§ 35-2403. Applicability.**

The requirements of this chapter shall apply:

(1) To any insurance policy or subscriber contract delivered or issued for delivery in the District more than 120 days after March 7, 1991; and

(2) To any insurance policy or subscriber contract renewed, amended, or reissued 120 days after March 7, 1991. (Mar. 7, 1991, D.C. Law 8-225, § 4, 38 DCR 217.)

**Legislative history of Law 8-225.** — See note to § 35-2401.

## CHAPTER 25. LIABILITY COVERAGE FOR CHILD DEVELOPMENT HOMES INSURANCE.

Sec.

35-2501. Definitions.

35-2502. General provisions.

Sec.

35-2503. Commissioner to establish liability coverage levels.

### § 35-2501. Definitions.

For the purposes of this chapter, the term:

(1) "Insurer" means any individual, partnership, corporation, company, organization, professional association, or other business entity that issues, amends, or renews motor vehicle liability or homeowner's liability insurance policies or contracts in the District of Columbia ("District").

(2) "Child development home" means a child development program provided in a private residence for up to a total of 5 children and infants, with no more than 2 infants in the group. The total of 5 children and infants shall not include the children of the child development home caregiver who are 6 years of age or older if the total number of children of the child development home caregiver between the ages of 6 and 15 years of age does not exceed 3 children, and of those 3 children, no more than 2 are 10 years old or younger.

(3) "Child development program" means a program responsive to the stages of physical, emotional, social, and intellectual growth and behavior of infants or children.

(4) "Caregiver" means a person whose duties include direct care, supervision, and guidance of infants or children in a child development home.

(5) "Infant" means an individual between the ages of birth and 2 years.

(6) "Child" means an individual between the ages of 2 and 15 years.

(7) "Commissioner" means the Commissioner of Insurance and Securities.

(8) "Person" means any individual, firm, partnership, company, corporation, trustee, or association. (June 13, 1990, D.C. Law 8-140, § 2, 37 DCR 2651; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(x), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) rewrote (7).

**Legislative history of Law 8-140.** — Law 8-140, the "Liability Coverage for Child Development Homes Insurance Act of 1990," was introduced in Council and assigned Bill No. 8-160, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-196 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 11- (Act 11-**

**524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

### § 35-2502. General provisions.

(a) An insurer shall offer to any person who is a licensed caregiver pursuant to 29 DCMR 301, optional liability and comprehensive coverage for up to a



total of 5 children and infants. The optional protection shall provide liability coverage for a child or infant who is injured while attending the child development home and comprehensive coverage for property damage to the child development home.

(b) An insurer who offers motor vehicle liability insurance in the District, pursuant to Chapter 21 of this title, may offer to any policyholder who is licensed pursuant to 29 DCMR 301 as a child development home caregiver, optional personal injury protection to cover a child or infant who suffers an injury while a passenger in an automobile operated out of the insured's activities as a child development home caregiver. The coverage required pursuant to this subsection shall be in an amount approved by the Commissioner.

(c) Nothing in this chapter shall prohibit an insurer from denying a child development home caregiver's application for optional insurance or denying liability coverage to an insured for an injury that results from abuse or neglect. (June 13, 1990, D.C. Law 8-140, § 3, 37 DCR 2651; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(x), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in (b).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2501.

**Legislative history of Law 8-140.** — See note to § 35-2501.

### § 35-2503. Commissioner to establish liability coverage levels.

For purposes of this chapter, the Commissioner shall establish liability coverage levels in rulemaking pursuant to the provisions of subchapter I of Chapter 15 of Title 1. (June 13, 1990, D.C. Law 8-140, § 4, 37 DCR 2651; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 8-140.** — See note to § 35-2501.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2501.

CHAPTER 26. MEDICARE SUPPLEMENT INSURANCE.

Sec.

35-2601 to 35-2610. [Repealed].

35-2611. Definitions.

35-2612. Applicability and scope.

35-2613. Standards for policy provisions and authority to promulgate regulations.

35-2614. Loss ratio standards.

Sec.

35-2615. Disclosure standards.

35-2616. Filing requirements; master policy and certificate.

35-2617. Notice of free examination.

35-2618. Filing requirements for advertising.

35-2619. Remedies.

35-2620. Rules.

**§§ 35-2601 to 35-2610. Definitions; applicability and scope; standards for policy provisions; filing requirements; master policy and certificate; loss ratio standards; disclosure standards; outline of coverage; notice of free examination; filing requirements for advertising; remedies; rules.**

Repealed. July 22, 1992, D.C. Law 9-133, § 12, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 12, 39 DCR 5825.

**Temporary repeal of chapter.** — Section 12 of D.C. Law 9-133 repealed §§ 35-2601 to 35-2610.

Section 13(b) of D.C. Law 9-133 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of

the Medicare Supplement Minimum Standards Act of 1992, whichever occurs first.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

**§ 35-2611. Definitions.**

For the purposes of this chapter, the term:

(1) "Applicant" means:

(A) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(B) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means any certificate delivered or issued for delivery in the District of Columbia under a group Medicare supplement policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(4) "Issuer" means an insurance company, a fraternal benefit association, a health care service plan, a health maintenance organization, and any other entity delivering or issuing for delivery in the District of Columbia Medicare supplement policies or certificates. The term "issuer" includes Group Hospitalization and Medical Services, Incorporated.

(5) "Medicare" means the health insurance program established pursuant to the Health Insurance for the Aged Act (42 U.S.C. § 303 *et seq.*).

(6) "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under § 1876 of the Social Security Act

(42 U.S.C. § 1395mm), or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.

(7) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer. (July 22, 1992, D.C. Law 9-133, § 2, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 2, 39 DCR 5825; Apr. 9, 1997, D.C. Law 11-202, § 2(a), 43 DCR 6054.)

**Effect of amendments.** — D.C. Law 11-202 substituted "contract under § 1876 of the Social Security Act (42 U.S.C. § 3995mm), or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1)" for "contract under § 1833 or 1876 of the Social Security Act (42 U.S.C. § 13951 or § 3995mm), or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act" in (6).

**Temporary addition of chapter.** — D.C. Law 9-133 enacted §§ 35-2611 through 35-2620, comprising Chapter 26 of Title 35.

Section 13(b) of D.C. Law 9-133 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Medicare Supplement Minimum Standards Act of 1992, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2(a) of the Medicare Supplement Insurance Minimum Standards Emergency Amendment Act of 1996 (D.C. Act 11-244, April 11, 1996, 43 DCR 2119), § 2(a) of the Medicare Supplement Insurance Minimum Standards Legislative Review Emergency Amendment Act of 1996 (D.C. Act 11-396, October 9, 1996, 43 DCR 5684), § 2(a) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-416, October 28, 1996, 43 DCR 6078), § 2(a) of the Medicare Supplement Insurance Minimum Standards Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-474, December 30, 1996, 44 DCR 198), and see § 2(a) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-49, March 31, 1997, 44 DCR 2112).

Section 3 of D.C. Act 11-396 provided for the application of the act.

Section 3 of D.C. Act 11-416 provided for the application of the act.

Section 3 of D.C. Act 11-474 provided for the application of the act.

**Legislative history of Law 9-133.** — Law 9-133, the "Medicare Supplement Insurance Minimum Standard Temporary Act of 1992," was introduced in Council and assigned Bill No. 9-458, which was retained by Council. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-218 and transmitted to both Houses of Congress for its review. D.C. Law 9-133 became effective on July 22, 1992.

**Legislative history of Law 9-170.** — Law 9-170, the "Medicare Supplement Insurance Minimum Standards Act of 1992," was introduced in Council and assigned Bill No. 9-459, which was referred to the Committee on Human Services and reassigned to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-268 and transmitted to both Houses of Congress for its review. D.C. Law 9-170 became effective on October 1, 1992.

**Legislative history of Law 11-202.** — Law 11-202, the "Medical Supplement Insurance Minimum Standards Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-627. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 5, 1996, it was assigned Act No. 11-367 and transmitted to both Houses of Congress for its review. D.C. Law 11-202 became effective on April 9, 1997.

**Delegation of Authority under D.C. Act 9-199, the Medicare Supplement Insurance Minimum Standards Emergency Act of 1992.** — See Mayor's Order 92-92, July 20, 1992.

**Delegation of Authority Under D.C. Law 9-170, the Medicare Supplement Insurance Standards Act of 1992.** — See Mayor's Order 93-60, May 12, 1993.



## § 35-2612. Applicability and scope.

(a) Except as otherwise specifically provided, this chapter shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in the District of Columbia on or after October 1, 1992; and

(2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in the District of Columbia.

(b) This chapter shall not apply to a policy for 1 or more employers or labor organizations, or of the trustees of a fund established by 1 or more employers or labor organizations, or combination thereof, for employees or former employees or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

(c) Except as otherwise specifically provided in § 35-2615(d) provisions of this chapter are not intended to prohibit or apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons, which policies are not marketed or held to be Medicare supplement policies or benefit plans. (July 22, 1992, D.C. Law 9-133, § 3, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 3, 39 DCR 5825; Apr. 9, 1997, D.C. Law 11-202, §§ 2(b)-(c), 43 DCR 6054.)

**Effect of amendments.** — D.C. Law 11-202 deleted “in § 35-2614” following “provided” in the introductory paragraph of (a); and added “Except as otherwise specifically provided in § 35-2615(d)” in (c).

**Temporary addition of chapter.** — See note to § 35-2611.

**Emergency act amendments.** — For temporary amendment of section, see § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Emergency Amendment Act of 1996 (D.C. Act 11-244, April 11, 1996, 43 DCR 2119), § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Legislative Review Emergency Amendment Act of 1996 (D.C. Act 11-396, October 9, 1996, 43 DCR 5684), § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-416, October 28, 1996, 43 DCR 6078), § 2(b) and (c) of the Medicare

Supplement Insurance Minimum Standards Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-474, December 30, 1996, 44 DCR 198), and see § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-49, March 31, 1997, 44 DCR 2112).

Section 3 of D.C. Act 11-396 provided for the application of the act.

Section 3 of D.C. Act 11-416 provided for the application of the act.

Section 3 of D.C. Act 11-474 provided for the application of the act.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

**Legislative history of Law 11-202.** — See note to § 35-2611.

## § 35-2613. Standards for policy provisions and authority to promulgate regulations.

(a) No Medicare supplement policy or certificate in force in the District of Columbia shall contain benefits that duplicate benefits provided by Medicare.

(b) Notwithstanding any other provision of law of the District of Columbia, a Medicare supplement policy or certificate shall not include or limit benefits for losses incurred more than 6 months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which

medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(c) The Mayor shall issue reasonable regulations to establish specific standards for policy provisions of Medicare supplement policies and certificates. These standards shall be in addition to and in accordance with applicable laws of the District of Columbia. No requirement of District of Columbia law relating to minimum required policy benefits, other than the minimum standards contained in this chapter, shall apply to Medicare supplement policies and certificates. The standards may cover, but not be limited to:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage;
- (4) Probationary periods;
- (5) Benefit limitations, exceptions, and reductions;
- (6) Elimination periods;
- (7) Requirements for replacement;
- (8) Recurrent conditions; and
- (9) Definition of terms.

(d) The Mayor shall issue reasonable regulations to establish minimum standards for benefits, claims payment, marketing practices, compensation arrangements, and reporting practices for Medicare supplement policies and certificates.

(e) The Mayor may issue reasonable regulations necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including, but not limited to:

- (1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (2) Establishing a uniform methodology for calculating and reporting loss ratios;
- (3) Assuring public access to policies, premiums, and loss ratio information of issuers of Medicare supplement insurance;
- (4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases;
- (5) Establishing a policy for holding public hearings prior to approval of premium increases; and
- (6) Establishing standards for Medicare select policies and certificates.

(f) The Mayor may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute, which, in the opinion of the Mayor, are unjust, unfair, or unfairly discriminatory to any person insured or proposed to be insured under a Medicare supplement policy or certificate. (July 22, 1992, D.C. Law 9-133, § 4, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 4, 39 DCR 5825.)

**Temporary addition of chapter.** — See note to § 35-2611.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

§ 35-2614. **Loss ratio standards.**

Medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The Mayor shall issue reasonable regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices. (July 22, 1992, D.C. Law 9-133, § 5, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 5, 39 DCR 5825.)

**Section references.** — This section is referred to in § 35-2612.

**Temporary addition of chapter.** — See note to § 35-2611.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

§ 35-2615. **Disclosure standards.**

(a) In order to provide for full and fair disclosure in the sale of Medicare supplement policies, no Medicare supplement policy or certificate shall be delivered in the District of Columbia unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The Mayor shall prescribe the format and content of the outline of coverage required by subsection (c) of this section. For purposes of this section, the term “format” means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and arrangement of text and captions. The outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the renewal provisions, including any reservation by the issuer of a right to change premiums, and disclosure of the existence of any automatic renewal premium increases based on the policyholder’s age; and

(3) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The Mayor may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for Medicare, which is intended to improve the buyer’s ability to select the most appropriate coverage and improve the buyer’s understanding of Medicare. Except in the case of the direct response insurance policies, the Mayor may require by regulation that the informational brochure be provided to any prospective insured eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the Mayor may require by regulation that the prescribed brochure be provided upon request to any prospective insured eligible for Medicare, but in no event later than the time of policy delivery.

(d) The Mayor may issue regulations for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement



coverages, for all accident and sickness insurance policies sold to persons eligible for Medicare, other than:

- (1) Medicare supplement policies; or
- (2) Disability income policies;
- (3) Repealed.
- (4) Repealed.

(e) The Mayor may issue reasonable regulations to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for Medicare. (July 22, 1992, D.C. Law 9-133, § 6, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 6, 39 DCR 5825; Apr. 9, 1997, D.C. Law 11-202, §§ 2(d)-(f), 43 DCR 6054.)

**Effect of amendments.** — D.C. Law 11-202 deleted “by reason of age” following “Medicare” in the introductory paragraph of (d); and repealed (d)(3) and (4).

**Temporary addition of chapter.** — See note to § 35-2611.

**Emergency act amendments.** — For temporary amendment of section, see § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Emergency Amendment Act of 1996 (D.C. Act 11-244, April 11, 1996, 43 DCR 2119), § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Legislative Review Emergency Amendment Act of 1996 (D.C. Act 11-396, October 9, 1996, 43 DCR 5684), § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-416, October 28, 1996, 43 DCR 6078), § 2(d) through (f) of the Medicare Supplement Insurance

Minimum Standards Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-474, December 30, 1996, 44 DCR 198), and see § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-49, March 31, 1997, 44 DCR 2112).

Section 3 of D.C. Act 11-396 provided for the application of the act.

Section 3 of D.C. Act 11-416 provided for the application of the act.

Section 3 of D.C. Act 11-474 provided for the application of the act.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

**Legislative history of Law 11-202.** — See note to § 35-2611.

## § 35-2616. Filing requirements; master policy and certificate.

(a) Except as provided in subsection (b) of this section, any insurer who provides group Medicare supplement insurance benefits to a resident of the District shall file the master policy and certificate, as provided by rule issued pursuant to § 35-2620.

(b) An insurer shall not be required to file the master policy and certificate within the 30-day period following the date that the insurance is provided if the policy is a master policy issued for delivery outside the District. (July 22, 1992, D.C. Law 9-133, § 7, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 7, 39 DCR 5825.)

**Temporary addition of chapter.** — See note to § 35-2611.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

**§ 35-2617. Notice of free examination.**

Medicare supplement policies and certificates shall have a notice prominently printed on the 1st page of the policy or certificate, or attached thereto, stating in substance that the applicant shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner. (July 22, 1992, D.C. Law 9-133, § 8, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 8, 39 DCR 5825.)

**Temporary addition of chapter.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**§ 35-2618. Filing requirements for advertising.**

(a) The Mayor shall establish, by rule, standards for advertising Medicare supplement insurance and benefits in the District.

(b) Each insurer, health care service plan, or other entity that provides Medicare supplement insurance or benefits in the District shall provide the Mayor, for review, a copy of any Medicare supplement advertisement intended for use in the District. (July 22, 1992, D.C. Law 9-133, § 9, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 9, 39 DCR 5825.)

**Temporary addition of chapter.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**§ 35-2619. Remedies.**

In addition to any other applicable penalty for a violation of the insurance laws of the District, the Mayor may require an insurer who violates this chapter, or rules issued pursuant to this chapter, to cease marketing in the District any Medicare supplement policy or certificate that is related directly or indirectly to a violation, or may require the issuer to take any actions necessary to comply with the provisions of this chapter, or both. (July 22, 1992, D.C. Law 9-133, § 10, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 10, 39 DCR 5825.)

**Temporary addition of chapter.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**§ 35-2620. Rules.**

(a) The Mayor shall issue proposed rules to implement the provisions of this chapter within 180 days of October 1, 1992. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays,

Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(b) The Mayor may issue emergency rules without prior Council approval, which shall be effective for not more than 120 days. (July 22, 1992, D.C. Law 9-133, § 11, 39 DCR 4060; Oct. 1, 1992, D.C. Law 9-170, § 11, 39 DCR 5825.)

**Section references.** — This section is referred to in § 35-2616.

**Temporary addition of chapter.** — See note to § 35-2611.

**Legislative history of Law 9-133.** — See note to § 35-2611.

**Legislative history of Law 9-170.** — See note to § 35-2611.



CHAPTER 27. INSURANCE REGULATORY TRUST FUND.

Sec.

35-2701. Definitions.

35-2702. Establishment of the Insurance Regulatory Trust Fund; funding; uses; budget.

35-2703. Assessments.

35-2704. Failure to pay share of assessment.

35-2705. Appeal from assessment.

35-2706. Insurers and health maintenance or-

Sec.

ganizations continuing obligations.

35-2707. Records.

35-2708. Insurance Regulatory Trust Fund Bureau.

35-2709. Annual audit of Insurance Regulatory Trust Fund.

35-2710. Applicability.

§ 35-2701. Definitions.

For the purposes of this chapter, the term:

(1) "Assessable year" means the calendar year in which the direct gross receipts are received or derived from insurance business in the District of Columbia.

(1A) "Commissioner" means the Commissioner or Department of Insurance and Securities Regulation.

(1B) "Department of Insurance and Securities" means the District of Columbia's regulatory body which is responsible for administering the insurance laws and health maintenance organization laws of the District of Columbia.

(2) "Direct gross receipts" means all policy and membership fees and net premium receipts or consideration received in a calendar year on all insurance risks and annuity contracts originating in or from the District of Columbia.

(3) Repealed.

(4) "Insurer" means any person, firm, association, or corporation duly licensed in the District of Columbia pursuant to the applicable provisions of District insurance law as an insurer. In addition, Group Hospitalization and Medical Service, Incorporated, shall be defined as an insurer.

(5) "Net premium receipts or consideration received" means gross premiums or consideration received less the sum of premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.

(6) Repealed. (Oct. 21, 1993, D.C. Law 10-40, § 2, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(a), 44 DCR 818; \_\_\_\_\_, 1997, D.C. Law 11-(Act 11-524), § 10(y), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11-235 rewrote former (3).

D.C. Law 11- (Act 11-524) inserted (1A) and (1B); and repealed (3) and (6).

**Legislative history of Law 10-40.** — Law 10-40, the "Insurance Regulatory Trust Fund Act of 1993," was introduced in Council and assigned Bill No. 10-93, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-75

and transmitted to both Houses of Congress for its review. D.C. Law 10-40 became effective on October 21, 1993.

**Legislative history of Law 11-235.** — Law 11-235, the "Health Maintenance Organization Act of 1996," was introduced in Council and assigned Bill No. 11-442, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-495 and transmitted to both Houses

of Congress for its review. D.C. Law 11-235 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both

Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Mayor authorized to issue rules.** — Section 12 of D.C. Law 10-40 provided that the Mayor may, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-40, the Insurance Regulatory Trust Fund Act of 1993.** — See Mayor’s Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-2702. Establishment of the Insurance Regulatory Trust Fund; funding; uses; budget.

(a) There is established within the General Fund of the District of Columbia a trust fund designated as the Insurance Regulatory Trust Fund, to which shall be credited all funds obtained pursuant to this act without regard to fiscal year limitation. All monies and interest earned on monies deposited in the Insurance Regulatory Trust Fund shall be credited to the Fund and used solely for the purpose of this act. Insurers and health maintenance organizations will be assessed separately. The funds obtained from assessments on insurance companies and health maintenance organizations will not be commingled within the Trust Fund, and separate accounts will be maintained within the Trust Fund in order to properly allocate assessment revenue and expenditures to insurers and health maintenance organizations.

(b) Subject to the applicable laws relating to the appropriation of District funds, monies received and deposited in the Insurance Regulatory Trust Fund or a division thereof, shall be used to defray the expenses of the Department of Insurance and Securities in the discharge of its administrative and regulatory duties as prescribed by law. These monies shall be deemed to include all administrative costs for regulating insurers and health maintenance organizations doing business in the District of Columbia, and no other assessments shall be charged for such purpose after the effective date of this act. The Mayor shall be responsible for the deposit and expenditure of these monies as provided by law.

(c)(1) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Insurance Regulatory Trust Fund. Any monies received but not expended in a given fiscal year shall be retained by the Fund and applied against the budget for the ensuing year, and the assessments for that year reduced accordingly.

(2) The Mayor’s request shall be based on an estimated projection of the expenditures necessary to perform the administrative and regulatory functions of the Insurance Administration. This estimate shall include, but not be limited to, expenditures for salaries, fringe benefits, overhead charges, travel, training, supplies, technical, professional, and any and all other services necessary to discharge the duties and responsibilities of administering the insurance laws of the District of Columbia.

(d) The Council of the District of Columbia shall approve and establish the budget of the Insurance Regulatory Trust Fund in the same manner and at the same level of detail as approved and established for departments and agencies under the administrative control of the Mayor as provided in § 1-227(f). (Oct. 21, 1993, D.C. Law 10-40, § 3, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, §§ 24(b)-(d), 44 DCR 818.)

**Effect of amendments.** — D.C. Law 11-235, in (a), substituted “monies and interest” for “interest” in the second sentence, and added the last two sentences; rewrote (b); and deleted the former last sentence in (d).

**Legislative history of Law 10-40.** — See note to § 35-2701.

**Legislative history of Law 11-235.** — See note to § 35-2701.

### § 35-2703. Assessments.

(a) The Mayor shall assess annually each insurer and health maintenance organization doing business in the District an amount based on a percentage of its direct gross receipts for the preceeding year, provided that each insurer and health maintenance organization shall be subject to a minimum annual assessment of no less than \$1000. The Mayor shall establish in each assessable year the assessment rate, not to exceed  $\frac{3}{10}$  of 1% of the direct gross receipts. In no event shall the amount assessed exceed the amount budgeted by the Council.

(b) The Mayor shall compute the assessment for each insurer and health maintenance organization and send the insurer and health maintenance organization this information in a “Notice of Assessment”. Each insurer and health maintenance organization shall pay to the Mayor the amount stated in the Notice of Assessment within 30 days of the mailing date of the Notice of Assessment.

(c) The annual billing cycle for the assessment established by this section shall be the fiscal year of the District of Columbia. (Oct. 21, 1993, D.C. Law 10-40, § 4, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(e), 44 DCR 818.)

**Section references.** — This section is referred to in § 35-2704.

**Effect of amendments.** — D.C. Law 11-235 inserted “and health maintenance organization” throughout the section; and, in the first sentence of (a), inserted “annually” following “shall assess”, deleted “annually” following “do-

ing business in the District”, and substituted “no less than \$1,000” for “\$1,000.”

**Legislative history of Law 10-40.** — See note to § 35-2701.

**Legislative history of Law 11-235.** — See note to § 35-2701.

### § 35-2704. Failure to pay share of assessment.

(a) Any insurer or health maintenance organization that fails to pay an assessment on or before the date set forth in § 35-2703 shall be subject to a penalty imposed by the Mayor, which shall be 10% of the assessment plus interest at one-half of 1% per month for the period between the due date and the date of full payment. If a payment is made in an amount later found to be in error, the Mayor shall do one of the following:

(1) If an additional amount is due, notify the insurer of the additional amount which shall be due within 15 days of the date of mailing of the notice; or



(2) If overpayment is made, order a refund.

(b) If an insurer or health maintenance organization fails to pay the amount of the assessment in a timely manner, the Mayor shall send the insurer or health maintenance organization a notice of deficiency, and 10 days after serving the deficiency notice may take whatever action, in the Mayor's discretion, the Mayor deems appropriate, including suspending or revoking the insurer's or health maintenance organization's certificate of authority or license to transact business, or any other appropriate action or sanction authorized under the insurance laws for failure to comply with District laws, including referring the matter to the Corporation Counsel for legal action to collect the assessment.

(c) In the event that any insurer or health maintenance organization fails, by reason of insolvency, impairment of capital and surplus, or other reason approved by the Mayor, to pay its assessment in full, the unpaid amounts shall be assessed against the remaining insurers or health maintenance organizations respectively, on a proportionate basis in comparison to their direct gross receipts. Any insurer or health maintenance organization paying this additional assessment shall have a claim against the defaulting insurer or health maintenance organization for the amount paid. (Oct. 21, 1993, D.C. Law 10-40, § 5, 40 DCR 6009; May 16, 1995, D.C. Law 10-255, § 28, 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-235, §§ 24(f)-(h), 44 DCR 818.)

**Section references.** — This section is referred to in § 35-2705.

**Effect of amendments.** — D.C. Law 10-255 validated a previously made change in (a)(2).

D.C. Law 11-235 inserted "[or] any health maintenance organization" in (a); inserted "or health maintenance organization" throughout (b) and (c); and made related changes.

**Legislative history of Law 10-40.** — See note to § 35-2701.

**Legislative history of Law 10-255.** — Law 10-255, the "Technical Amendments Act of

1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Legislative history of Law 11-235.** — See note to § 35-2701.

## § 35-2705. Appeal from assessment.

Any insurer or health maintenance organization aggrieved by an assessment may appeal under procedures established in § 101 of Title 26 of the District of Columbia Municipal Regulations (26 DCMR 101), or as otherwise may be provided by the Mayor. If an appellant fails to pay the assessment when due, the appellant shall be liable for any amounts correctly assessed and any penalties and interest due thereon. The appellant shall pay any amounts owed within 10 days of a final decision and the Mayor may take whatever action is appropriate under this chapter, including action under § 35-2704, or any other laws regulating the insurance industry to effect collection. In addition, the Insurance Regulatory Trust Fund Bureau may appeal to the Mayor the entire annual assessment or a specific expenditure or category of

expenditure, in accordance with the procedures established in 26 DCMR 101, if it believes the assessment is not in accordance with this chapter or applicable laws. (Oct. 21, 1993, D.C. Law 10-40, § 6, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(i), 44 DCR 818.)

**Effect of amendments.** — D.C. Law 11-235 inserted “or health maintenance organization” in the first sentence.

**Legislative history of Law 11-235.** — See note to § 35-2701.

**Legislative history of Law 10-40.** — See note to § 35-2701.

## § 35-2706. Insurers and health maintenance organizations continuing obligations.

Any insurer or health maintenance organization whose license has been revoked, cancelled, terminated, or surrendered shall continue to be bound by the obligations of this chapter including payment of all assessments, regardless of whether the insurer or health maintenance organization continues to do business in the District of Columbia. (Oct. 21, 1993, D.C. Law 10-40, § 7, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(j), 44 DCR 818.)

**Effect of amendments.** — D.C. Law 11-235 inserted “or health maintenance organization” twice.

**Legislative history of Law 11-235.** — See note to § 35-2701.

**Legislative history of Law 10-40.** — See note to § 35-2701.

## § 35-2707. Records.

The Mayor shall, at all reasonable times, make books, records, and files available to insurance company representatives for the purpose of examining any matter coming within the scope of the chapter and the insurance laws of the District of Columbia. (Oct. 21, 1993, D.C. Law 10-40, § 8, 40 DCR 6009.)

**Legislative history of Law 10-40.** — See note to § 35-2701.

## § 35-2708. Insurance Regulatory Trust Fund Bureau.

All insurers and health maintenance organizations subject to assessments in accordance with this chapter shall be members of an Insurance Regulatory Trust Bureau, organized and maintained by such insurers and health maintenance organizations at their own expense, for the purpose of advising the Commissioner of Insurance and Securities annually as to the need for the proposed assessments, the fairness of the proposed assessments, and any other matters with respect to the administration of the Insurance Regulatory Trust Fund. The Commissioner shall submit to the Insurance Regulatory Trust Fund Bureau annually, in advance of the Mayor’s budget submission to the Council, a detailed budget showing how the proposed assessments are to be expended. (Oct. 21, 1993, D.C. Law 10-40, § 9, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(k), 44 DCR 818; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(y), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11-235 inserted “and health maintenance organizations” twice.

D.C. Law 11- (Act 11-524) substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance” in the first sentence; and substituted “Commissioner” for “Superintendent” in the last sentence.

**Legislative history of Law 10-40.** — See note to § 35-2701.

**Legislative history of Law 11-235.** — See note to § 35-2702.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2701.

## § 35-2709. Annual audit of Insurance Regulatory Trust Fund.

Upon a vote of the Insurance Regulatory Trust Fund Bureau taken in accordance with its bylaws, the Insurance Regulatory Trust Fund Bureau, at its own expense, may annually arrange for an independent audit of the expenditures made in any fiscal year by the Insurance Regulatory Trust Fund. The Commissioner, the Department of Insurance and Securities Regulation, and all other elements of the Government of the District of Columbia shall cooperate with such an audit and shall make available all documents and records reasonably necessary to the conduct of the audit. (Oct. 21, 1993, D.C. Law 10-40, § 10, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(l), 44 DCR 818; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(y), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11-235 deleted “the Department of Consumer and Regulatory Affairs” preceding “and all other elements” in the last sentence.

D.C. Law 11- (Act 11-524), in the last sentence, substituted “Commissioner” for “Superintendent” and substituted “Department of Insurance and Securities Regulation” for “Department of Consumer and Regulatory Affairs.”

The last sentence is set out above as amended by D.C. Law 11- (Act 11-524).

**Legislative history of Law 10-40.** — See note to § 35-2701.

**Legislative history of Law 11-235.** — See note to § 35-2701.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2701.

## § 35-2710. Applicability.

(a) All health maintenance organizations, life, health, property, marine, title, casualty, fidelity, surety, insurance companies and fraternal benefit associations now or hereafter incorporated or formed in the District of Columbia or authorized to do business in the District of Columbia, shall be subject to this chapter. This chapter shall also apply to Group Hospitalization and Medical Service, Incorporated, and any other company or organization whether for profit or nonprofit subject to regulation by the Insurance Administration.

(b) The provisions of this chapter shall not apply until October 1, 1993. (Oct. 21, 1993, D.C. Law 10-40, § 11, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(m), 44 DCR 818.)

**Effect of amendments.** — D.C. Law 11-235 inserted “health maintenance organizations” in (a).

**Legislative history of Law 10-40.** — See note to § 35-2701.

**Legislative history of Law 11-235.** — See note to § 35-2701.



## CHAPTER 28. INSURERS REHABILITATION AND LIQUIDATION PROCEDURES.

- |  |   |
|--|---|
| Sec.   | Sec.  |
| 35-2801. Definitions.  | 35-2833. Filing of claims.  |
| 35-2802. Applicability.  | 35-2834. Proof of claim.  |
| 35-2803. Jurisdiction and venue.   | 35-2835. Special claims.  |
| 35-2804. Injunctions and orders.   | 35-2836. Special provisions for third party claims.   |
| 35-2805. Cooperation of officers, owners, and employees.   | 35-2837. Disputed claims.   |
| 35-2806. Continuation of delinquency proceedings.  | 35-2838. Claims of surety.  |
| 35-2807. Condition on release from delinquency proceedings; conditions on operations during proceedings. | 35-2839. Secured creditor's claims.   |
| 35-2808. Temporary seizure order.  | 35-2840. Priority of distribution.  |
| 35-2809. Confidentiality of records.   | 35-2841. Liquidator's recommendations to the court.   |
| 35-2810. Grounds for rehabilitation.   | 35-2842. Distribution of assets.  |
| 35-2811. Rehabilitation orders.  | 35-2843. Unclaimed and withheld funds.  |
| 35-2812. Powers and duties of the rehabilitator.   | 35-2844. Termination of proceedings.  |
| 35-2813. Actions by and against the rehabilitator.   | 35-2845. Reopening liquidation.   |
| 35-2814. Termination of rehabilitation.  | 35-2846. Disposition of records during and after termination of liquidation.                      |
| 35-2815. Grounds for liquidation.  | 35-2847. External audit of the receiver's books.  |
| 35-2816. Liquidation orders.   | 35-2848. Conservation of property of foreign or alien insurers found in the District of Columbia. |
| 35-2817. Continuance of coverage.  | 35-2849. Liquidation of property of foreign or alien insurers found in the District of Columbia.  |
| 35-2818. Dissolution of insurer.   | 35-2850. Domiciliary liquidators in other states.   |
| 35-2819. Powers of liquidator.   | 35-2851. Ancillary formal proceedings.  |
| 35-2820. Notice to creditors and others.   | 35-2852. Ancillary summary proceedings.   |
| 35-2821. Duties of agents.   | 35-2853. Claims of nonresidents against insurers domiciled in the District of Columbia.           |
| 35-2822. Actions by and against liquidator.  | 35-2854. Claims of residents against insurers domiciled in reciprocal states.                     |
| 35-2823. Collection and list of assets.  | 35-2855. Attachment, garnishment, and levy of execution.  |
| 35-2824. Fraudulent transfer prior to petition.  | 35-2856. Interstate priorities.   |
| 35-2825. Fraudulent transfer after petition.   | 35-2857. Subordination of claims for noncooperation.  |
| 35-2826. Voidable preferences and liens.   |   |
| 35-2827. Claims of holders of void or voidable rights.   |   |
| 35-2828. Setoffs.  |   |
| 35-2829. Assessments.  |   |
| 35-2830. Reinsurer's liability.  |   |
| 35-2831. Recovery of premiums owed.  |   |
| 35-2832. Domiciliary liquidator's proposal to distribute assets.   |   |

## § 35-2801. Definitions.

For the purposes of this chapter, the term:

- (1) "Ancillary state" means any state other than a domiciliary state.
- (1A) "Commissioner" means the Commissioner of Insurance and Securities.
- (2) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.
- (3) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer, and any summary proceeding under § 35-2808.

(4) "District" means the District of Columbia.

(5) "Doing business" includes any of the following acts, whether effected by mail or otherwise:

(A) The issuance or delivery of contracts of insurance to persons resident in the District;

(B) The solicitation of applications for the contracts, or other negotiations preliminary to the execution of the contracts;

(C) The collection of premiums, membership fees, assessments, or other consideration for the contracts;

(D) The transaction of matters subsequent to execution of the contracts and arising out of them; or

(E) Operating under a license or certificate of authority, as an insurer, issued by the District.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

(7) "Fair consideration" is given for property or obligation:

(A) When, in exchange for the property or obligation, as a fair equivalent therefore and in good faith, property is conveyed, services are rendered, an obligation is incurred, or an antecedent debt is satisfied; or

(B) When the property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

(8) "Foreign country" means any other jurisdiction not in any state.

(9) "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(10) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, the term "general assets" includes all the property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(11) "Guaranty association" means the District of Columbia Property and Casualty Insurance Guaranty Association, and any other similar entity now or hereafter created by the Council of the District of Columbia for the payment of claims of insolvent insurers. The term "foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.

(12) "Insolvency" or "insolvent" means:

(A) For an insurer issuing only assessable fire insurance policies:

(i) The inability to pay any obligation within 30 days after it becomes payable; or

(ii) If an assessment be made within 30 days after the date, the inability to pay the obligation 30 days following the date specified in the first assessment notice issued after the date of loss;

(B) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

- (i) Any capital and surplus required by law for its organization; or
- (ii) The total par or stated value of its authorized and issue capital stock;

(C) As to any insurer licensed to do business in the District as of October 15, 1993, which does not meet the standard established under subparagraph (B) of this paragraph for a period not to exceed 3 years from October 15, 1993, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the Commissioner under provisions of the insurance law; and

(D) For purposes of this paragraph, the term "liabilities" shall include, but not be limited to, capital, surplus, or other reserves required by statute or by insurance administration general regulations, or specific requirements imposed by the Commissioner upon a subject company at the time of admission or subsequent thereto.

(13) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance superintendent or commissioner.

(14) "Person" means corporations, partnerships, associations, trusts, and individual natural persons.

(15) "Preferred claim" means any claim with respect to which the terms of this act accord priority of payment from the general assets of the insurer.

(16) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

(17) "Reciprocal state" means any state other than the District in which in substance and effect §§ 35-2816(a), 35-2850, 35-2851, and 35-2853 through 35-2855 are in force, and in which provisions are in force requiring that the Commissioner or equivalent official be the receiver of a delinquent insurer, and in which fraudulent conveyances and preferential transfers by a delinquent insurer may be avoided.

(18) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term "secured claim" also includes claims which have become liens upon specific assets by reason of judicial process.

(19) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(20) "State" means any state, district, or territory of the United States and the Panama Canal Zone.

(21) Repealed.

(22) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or parting with property or with an interest



therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor. (Oct. 15, 1993, D.C. Law 10-35, § 2, 40 DCR 5773; May 16, 1995, D.C. Law 10-255, § 27(a), 41 DCR 5193; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(1), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 10-255 validated a previously made section reference change in (17).

D.C. Law 11- (Act 11-524) inserted (1A); and repealed (21).

**Legislative history of Law 10-35.** — Law 10-35, the “Insurers Rehabilitation and Liquidation Act of 1993,” was introduced in Council and assigned Bill No. 10-123, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-68 and transmitted to both Houses of Congress for its review. D.C. Law 10-35 became effective on October 15, 1993.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

## § 35-2802. Applicability.

The proceedings authorized by this chapter may be applied to:

(1) All insurers who are doing, or have done, an insurance business in the District, and against whom claims arising from that business may exist now or in the future;

(2) All insurers who purport to do an insurance business in the District;

(3) All insurers who have insureds resident in the District;

(4) All other persons organized or in the process of organizing with the intent to do an insurance business in the District;

(5) All title insurance companies subject to the laws of the District;

(6) All prepaid health care delivery plans;

(7) All nonprofit service plans and all fraternal benefit societies and beneficial societies; and

(8) All insurers making contracts of fidelity or surety contracts or other negotiations preliminary to the executions of the contracts. (Oct. 15, 1993, D.C. Law 10-35, § 3, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

**§ 35-2803. Jurisdiction and venue.**

(a) No delinquency proceeding shall be commenced under this chapter by anyone other than the Commissioner of Insurance and Securities and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(b) No court of the District of Columbia shall have jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer; or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to these proceedings other than in accordance with this chapter.

(c) In addition to other grounds for jurisdiction provided by law of the District, the Superior Court of the District of Columbia has jurisdiction over a person served pursuant to the Superior Court Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in the District:

(1) If the person served is an agent, broker, or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(2) If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract;

(3) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(4) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or

(5) If the person served is obligated to the insurer, in any way whatsoever, in any action on or incident to the obligation.

(d) If the court, on motion of any party, finds that any action should as a matter of substantial justice be tried in a forum outside the District, the court may enter an appropriate order to stay further proceedings on the action in the District.

(e) All action authorized in this section shall be brought in the Superior Court of the District of Columbia. (Oct. 15, 1993, D.C. Law 10-35, § 4, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- \_\_\_\_\_ substituted “Commissioner of Insurance and Securities” for “Superintendent of Insurance of the District of Columbia” in (a).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

### § 35-2804. Injunctions and orders.

(a) Any receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders deemed necessary and proper to prevent:

- (1) The transaction of further business;
- (2) The transfer of property;
- (3) Interference with the receiver or with a proceeding under this chapter;
- (4) Waste of the insurer's assets;
- (5) Dissipation and transfer of bank accounts;
- (6) The institution or further prosecution of any actions or proceedings;
- (7) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders;
- (8) The levying of execution against the insurer, its assets, or its policyholders;

(9) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(10) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(11) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(b) The receiver may apply to any court outside of the jurisdiction for the relief described in subsection (a) of this section. (Oct. 15, 1993, D.C. Law 10-35, § 5, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2805. Cooperation of officers, owners, and employees.

(a) Any officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the Commissioner in any proceeding under this chapter or any investigation preliminary to the proceeding. For the purposes of this section, the term "person" shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. The term "to cooperate" shall include, but shall not be limited to, the following:

(1) To reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and

(2) To make available to the Commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody, or control.



(b) No person shall obstruct or interfere with the Commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(c) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation, other delinquency proceedings, or other orders.

(d) Any person included within subsection (a) of this section who fails to cooperate with the Commissioner, or any person who obstructs or interferes with the Commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who violates any order of the Commissioner issued validly under this chapter may:

(1) Be sentenced to pay a fine not exceeding \$10,000 or imprisonment for a term of not more than 1 year, or both; or

(2) After a hearing, be subject to the imposition by the Commissioner of a civil penalty not to exceed \$10,000 and be subject further to the revocation or suspension of any insurance license issued by the Commissioner. (Oct. 15, 1993, D.C. Law 10-35, § 6, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2821.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2806. Continuation of delinquency proceedings.

Every proceeding commenced under §§ 35-419 through 35-421, and §§ 35-1508 through 35-1510, shall be deemed to have commenced under this chapter for the purpose of continuing the proceeding, except that in the discretion of the Commissioner the proceeding may be continued, in whole or in part, as it would have been continued had this chapter not been enacted. (Oct. 15, 1993, D.C. Law 10-35, § 7, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

**References in text.** — “Sections 35-419

through 35-421”, referred to in this section, were repealed by D.C. Law 10-35, § 59(a), 40 DCR 5773, effective October 15, 1993. “Sections 35-1508 through 35-1510”, referred to in this section, were repealed by D.C. Law 10-35, § 59(b), 40 DCR 5773, effective October 15, 1993.

## § 35-2807. Condition on release from delinquency proceedings; conditions on operations during proceedings.

No insurer that is subject to any delinquency proceedings, whether formal or informal (administrative or judicial), shall:

(1) Be released from the proceeding, unless the proceeding is converted into a judicial rehabilitation or liquidation proceeding;

(2) Be permitted to solicit or accept new business, or request or accept the restoration of any suspended or revoked license or certificate of authority;

(3) Be returned to the control of its shareholders or private management; or

(4) Have any of its assets returned to the control of its shareholders or private management until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses and interest on all payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the insurer shall have been approved by the guaranty association. (Oct. 15, 1993, D.C. Law 10-35, § 8, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2808. Temporary seizure order.

(a) The Commissioner may file in the Superior Court of the District of Columbia a petition alleging, with respect to a domestic insurer, that there exists grounds that would justify a court order for a formal delinquency proceeding against an insurer under this chapter, and that the interests of policyholders, creditors, or the public will be endangered by delay in the Commissioner's determination of the financial condition of the insurer.

(b) Upon a filing under subsection (a) of this section, the court may issue, ex parte and without a hearing, the requested order which shall direct the Commissioner to take possession and control of all or part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business; and until further order of the court enjoins the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the Commissioner.

(c) The court shall specify in the order its duration, which shall be the time the court deems necessary for the Commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold hearings it deems desirable after notice it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the Commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter shall ipso facto vacate the seizure order.

(d) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(e) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of the order for a hearing and review of the order. The court shall hold such a hearing and review not more than 15 days after the request. A hearing under this subsection may be held privately in chambers and it shall be if the insurer proceeded against so requests.

(f) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court. (Oct. 15, 1993, D.C. Law 10-35, § 9, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2801, 35-2809, and 35-2852.

**Effect of amendments.** — D.C. Law 11- (D.C. Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2809. Confidentiality of records.

In all proceedings and judicial reviews under § 35-2808, all records of the insurer, other documents, all Department of Insurance Securities files, court records, and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance, unless and until the Superior Court of the District of Columbia, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until such a court order, all papers filed with the clerk of the Superior Court of the District of Columbia shall be held in a confidential file. (Oct. 15, 1993, D.C. Law 10-35, § 10, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(1), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2852.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Department of Insurance and Securities” for “Insurance Administration” in the first sentence.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2810. Grounds for rehabilitation.

The Commissioner may apply by petition to the Superior Court of the District of Columbia for an order authorizing him or her to rehabilitate a domestic insurer or an alien insurer domiciled in the District based on any one or more of the following grounds:

(1) The insurer is in such a condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer’s assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee,



or other person, if the person has been found after notice and hearing by the Commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy in any way that affects the insurer's business.

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the Commissioner concerning its affairs, whether in the District or elsewhere, and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate its relationship with that person, or to prevent that person from influencing the insurer's management.

(6) After demand by the Commissioner under this chapter, or any law authorizing the Commissioner to examine the operations of an insurer, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the Commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to Chapter 37 of this title, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property other than as authorized under the insurance laws of the District, and the appointment has been made or is imminent, and the appointment would deprive the courts of the District of Columbia of jurisdiction or might prejudice the orderly delinquency proceedings under this chapter.

(9) The insurer, within the previous 4 years, willfully violated its charter or articles of incorporation, its bylaws, any insurance law of the District, or any valid order of the Commissioner.

(10) The insurer has failed to pay, within 60 days after due date, any obligation to any state or any subdivision or any judgment entered in any state, if the court in which the judgment was entered had jurisdiction over the subject matter, except that the nonpayment shall not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the Commissioner or in court, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law, and, after written

demand by the Commissioner, has failed to give an adequate explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in the insurance laws of the District, request or consent to rehabilitation under this chapter. (Oct. 15, 1993, D.C. Law 10-35, § 11, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2814, 35-2815, 35-2848, and 35-2849.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2811. Rehabilitation orders.

(a) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in the District, shall appoint the Commissioner and his or her successors in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the Superior Court of the District of Columbia shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(b) Any order issued under this section shall require accountings to the court by the rehabilitator. Accountings shall be at intervals the court specifies in its order, but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator’s opinion as to the likelihood that a plan under § 35-2812(e) will be prepared by the rehabilitator and the timetable for doing so.

(c) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer, unless the revocation or cancellation is done by the rehabilitator pursuant to § 35-2812. (Oct. 15, 1993, D.C. Law 10-35, § 12, 40 DCR 5773; May 16, 1995, D.C. Law 10-255, § 27(b), 41 DCR 5193; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2835.

**Effect of amendments.** — D.C. Law 10-255 validated a previously made section reference change in (b).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the first sentence in (a).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 10-255.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

**§ 35-2812. Powers and duties of the rehabilitator.**

(a) The Commissioner as rehabilitator may appoint 1 or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the Commissioner may employ any counsel, clerks, and assistants deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the Commissioner, with the approval of the court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the Commissioner. The Commissioner, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should that committee be deemed necessary. The advisory committee shall serve at the pleasure of the Commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the Commissioner or the court in rehabilitation proceedings conducted under this chapter.

(b) In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the Commissioner may advance the costs so incurred out of any appropriation for the maintenance of the Department of Insurance and Securities. Any amounts so advanced for expenses of administration shall be repaid to the Commissioner for the use of the Department of Insurance and Securities out of the first available money of the insurer.

(c) The rehabilitator may take such action as deemed necessary or appropriate to reform and revitalize the insurer. The rehabilitator shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(d) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he or she may pursue all appropriate legal remedies on behalf of the insurer.

(e) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect the changes. Upon application of the rehabilitator for approval of the plan, and after any notice and hearings the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose



imposition of a moratorium upon loan and cash surrender rights under policies, for such a period and to such an extent as may be necessary.

(f) The rehabilitator shall have the power under §§ 35-2824 and 35-2825 to avoid fraudulent transfers. (Oct. 15, 1993, D.C. Law 10-35, § 13, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2811 and 35-2814.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout (a) and (b); and substituted “Department of Insurance and Se-

curities” for “Insurance Administration” twice in (b).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2813. Actions by and against the rehabilitator.

(a) Any court in the District before which any action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and any additional time necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take any action respecting the pending litigation deemed necessary in the interests of, justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside the District and shall petition the court having jurisdiction over that litigation for a stay whenever necessary to protect the estate of the insurer.

(b) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within 1 year or any other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered.

(c) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation. (Oct. 15, 1993, D.C. Law 10-35, § 14, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2814. Termination of rehabilitation.

(a) Whenever the Commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders,

or the public, or would be futile, the Commissioner may petition the Superior Court of the District of Columbia for an order of liquidation. A petition under this subsection shall have the same effect as a petition under § 35-2815. The Superior Court of the District of Columbia shall permit the directors of the insurer to take any action reasonably necessary to defend against the petition and may order payment from the estate of the insurer of the costs and other expenses of defense as justice may require.

(b) The protection of the interests of insureds, claimants, and the public requires the timely performance of all insurance policy obligations. If the payment of policy obligations is suspended in substantial part for a period of 6 months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under § 35-2812(e), the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

(c) The rehabilitator may at any time petition the Superior Court of the District of Columbia for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of the costs and other expenses of the petition as justice may require. If the Superior Court of the District of Columbia finds that rehabilitation has been accomplished and that grounds for rehabilitation under § 35-2810 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The Superior Court of the District of Columbia may also make that finding and issue that order at any time upon its own motion. (Oct. 15, 1993, D.C. Law 10-35, § 15, 40 DCR 5773; May 16, 1995, D.C. Law 10-255, § 27(c), 41 DCR 5193; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 10-255 validated a previously made section reference change in (b).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in (a).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 10-255.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2815. Grounds for liquidation.

The Commissioner may petition the Superior Court of the District of Columbia for an order directing him or her to liquidate a domestic insurer or an alien insurer domiciled in the District on the basis:

(1) Of any ground for an order of rehabilitation as specified in § 35-2810, whether or not there has been a prior order directing the rehabilitation of the insurer;

(2) That the insurer is insolvent; or

(3) That the insurer is in such a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public. (Oct. 15, 1993, D.C. Law 10-35, § 16, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2814 and 35-2849.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the introductory paragraph.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2816. Liquidation orders.

(a) An order to liquidate the business of a domestic insurer shall appoint the Commissioner and his or her successors in office liquidator and shall direct the liquidator to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the Clerk of the Superior Court of the District of Columbia, or, in the case of real estate, with the recorder of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(b) Upon issuance of the order, the rights and liabilities of any insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in §§ 35-2817 and 35-2835.

(c) An order to liquidate the business of an alien insurer domiciled in the District shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

(d) At the time of petitioning for an order of liquidation, or at any time thereafter, the Commissioner, after making appropriate findings of an insurer’s insolvency, may petition the court for a judicial declaration of insolvency. After providing notice and hearing it deems proper, the court may make the declaration.

(e) Any order issued under this section shall require financial reports to the court by the liquidator. Financial reports shall include, at a minimum, the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within 1 year of the liquidation order and at least annually thereafter.

(f)(1) Within 5 days of October 15, 1993, or, if later, within 5 days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the Commissioner shall present for the court’s approval a plan for the continued performance of the defendant company’s policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such a plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company’s financial condition will not, in the judgment of the Commissioner,



support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the Commissioner finds to be fair and equitable considering the relative circumstances of the policyholders and claimants. The court shall examine the plan submitted by the Commissioner, and, if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the Commissioner or any of his deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(2) The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

(3) Any plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, so that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment has been made with the consent of all applicable guaranty associations. (Oct. 15, 1993, D.C. Law 10-35, § 17, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2801, 35-2817, 35-2829, 35-2835, and 35-3901.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a) and (d) and throughout (f)(1).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2817. Continuance of coverage.

(a) All policies, including bonds and other noncancellable business, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

(1) A period of 30 days from the date of entry of the liquidation orders;

(2) The expiration of the policy coverage;

(3) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;

(4) The liquidator has effected a transfer of the policy obligation pursuant to § 35-2819(a)(9); or

(5) The date proposed by the liquidator and approved by the court to cancel coverage.

(b) An order of liquidation under § 35-2816 shall terminate coverages at the time specified in subsection (a) of this section for purposes of any other statute.

(c) Policies of life or health insurance or annuities shall continue in force for such a period and under the terms provided for by any applicable guaranty association or foreign guaranty association.

(d) Policies of life or health insurance or annuities or any period or coverage of any policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (a) and (b) of this section. (Oct. 15, 1993, D.C. Law 10-35, § 18, 40 DCR 5773; May 16, 1995, D.C. Law 10-255, § 27(d), 41 DCR 5193; Apr. 18, 1996, D.C. Law 11-110, § 40, 43 DCR 530.)

**Section references.** — This section is referred to in § 35-2816.

**Effect of amendments.** — D.C. Law 10-255 purported to validate a previously made change in (b).

D.C. Law 11-110 validated a previously made substitution of “An” for “as” in (b).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 10-255.** — See note to § 35-2801.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

## § 35-2818. Dissolution of insurer.

The Commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in the District at the time he or she applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the Commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent, but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason. (Oct. 15, 1993, D.C. Law 10-35, § 19, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2819.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2819. Powers of liquidator.

(a) The liquidator shall have the power:

(1) To appoint a special deputy or deputies to act for him or her under this chapter, and to determine his or her reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;

(2) To hire employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he or she deems necessary to assist in the liquidation;

(3) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. The committee shall serve at the pleasure of the Commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the Commissioner or the court in liquidation proceedings conducted under this chapter;

(4) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(5) To pay reasonable compensation to persons appointed, and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the Commissioner may advance the costs incurred out of any appropriation for the maintenance of the Department of Insurance and Securities. Any amounts advanced for expenses of administration shall be repaid to the Commissioner for the use of the Department of Insurance and Securities out of the first available monies of the insurer;

(6) To hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, or other documents which the liquidator deems relevant to the inquiry;

(7) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(8) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

(A) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against the debts;

(B) To do any other acts necessary or expedient to collect, conserve, or protect assets or property of the insurer, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he or she deems best; and

(C) To pursue any creditor's remedies available to enforce his or her claims;

(9) To conduct public and private sales of the property of the insurer;

(10) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under § 35-2840;

(11) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon terms and conditions that are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;



(12) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution;

(13) To enter into any contracts necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party;

(14) To continue to prosecute and to institute in the name of the insurer, or in his or her own name, any and all suits and other legal proceedings, in the District or elsewhere, and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under § 35-2818, the liquidator shall have the power to apply to any court in the District or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

(15) To prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person;

(16) To remove any or all records and property of the insurer to the offices of the Commissioner or to any other place convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have reasonable access to the records of the insurer necessary for them to carry out their statutory obligations;

(17) To deposit in 1 or more banks in the District the sums required for meeting current administration expenses and dividend distributions;

(18) To invest all sums not currently needed, subject to the same standards that would apply if those sums were invested by the insurer, unless the court orders otherwise;

(19) To file any necessary documents for record in the office of any recorder of deeds or record office in the District or elsewhere where property of the insurer is located;

(20) To assert all defenses available to the insurer against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such an obligation and may defend only in the absence of a defense by the guaranty associations;

(21) To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included within §§ 35-2824 through 35-2826;

(22) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered;

(23) To enter into agreements with any receiver or superintendent or commissioner of insurance of any other state relating to the rehabilitation,

liquidation, conservation, or dissolution of an insurer doing business in both states; and

(24) To exercise all powers now held or hereafter conferred upon receivers by the laws of the District not inconsistent with the provisions of this chapter.

(b)(1) If a company placed in liquidation issued liability policies on a claims-made basis, which provided an option to purchase an extended period to report claims, the liquidator may make available to holders of the policies, for a charge, an extended period to report claims as stated herein. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or 18 months from the order of liquidation.

(2) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such an extended period within 60 days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. The offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within 90 days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

(c) The enumeration, in this section, of the powers and authority of the liquidator shall not be construed as a limitation upon him or her, nor shall it exclude in any manner his or her right to do other acts not specifically enumerated or otherwise provided for, necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(d) Notwithstanding the powers of the liquidator stated in subsections (a) and (b) of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order. (Oct. 15, 1993, D.C. Law 10-35, § 20, 40 DCR 5773; May 16, 1995, D.C. Law 10-255, § 27(e), 41 DCR 5193; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2817.

**Effect of amendments.** — D.C. Law 10-255 validated previously made changes in (a)(21) and (b)(2).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout (a)(3), (a)(5), and (a)(16); and substituted “De-

partment of Insurance and Securities” for “Insurance Administration” twice in (a)(5).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 10-255.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2820. Notice to creditors and others.

(a) Unless the court otherwise directs, the liquidator shall give, or cause to be given, notice of the liquidation order as soon as possible:

(1) By first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(2) By first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(3) By first class mail to all insurance agents of the insurer;

(4) By first class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last known address as indicated by the records of the insurer; and

(5) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in other locations the liquidator deems appropriate.

(b) Notice to potential claimants under subsection (a) of this section shall require claimants to file with the liquidator their claims, together with proper proofs under § 35-2834, on or before a date the liquidator shall specify in the notice. Although an earlier date may be set by the liquidator, the last day to file claims shall be no later than 18 months following the order of liquidation. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

(c)(1) Notice under subsection (a) of this section to agents of the insurer and to potential claimants who are policyholders shall include, where applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(2) The liquidator shall promptly provide to the guaranty associations any information concerning the identities and addresses of the policyholders and their policy coverages as may be within the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including, as applicable, coverage of claims and continuation or termination of coverages.

(d) If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice. (Oct. 15, 1993, D.C. Law 10-35, § 21, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2821, 35-2833, and 35-2836.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2821. Duties of agents.

(a) Every person who receives notice in the form prescribed in § 35-2820 that an insurer which he represents as an agent is the subject of a liquidation order shall, within 30 days of the notice, provide to the liquidator (in addition to the information he may be required to provide pursuant to § 35-2805) the information in the agent's records related to any policy issued by the insurer through the agent, and, if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through an agent under contract to him or her, including the name and address of such subagent. A policy shall be deemed issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in his or her possession a copy of the declarations of the policy at any time during the



life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(b) Any agent failing to provide information to the liquidator as required in subsection (a) of this section may be subject to payment of a penalty of not more than \$1,000 and may have his or her licenses suspended, the penalty to be imposed after a hearing held by the Commissioner. (Oct. 15, 1993, D.C. Law 10-35, § 22, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (b).

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2822. Actions by and against liquidator.

(a) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in the District, no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in the District or elsewhere, nor shall any existing actions be maintained or further presented after issuance of the order. The courts of the District shall give full faith and credit to injunctions against the liquidator or the company, or the continuation of existing actions against the liquidator or the company, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever, in the liquidator’s judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside the District, he or she may intervene in the action. The liquidator may defend any action in which he or she intervenes under this section at the expense of the estate of the insurer.

(b) The liquidator may, upon or after an order for liquidation, within 2 years, or other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in such a case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act required of or permitted to the insurer within a period of 180 days subsequent to the entry of an order for liquidation, or within any further period shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(c) No statute of limitation or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that

might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

(d) Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation. (Oct. 15, 1993, D.C. Law 10-35, § 23, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

**D.C. case dismissed where foreign court enjoined prosecution and retained jurisdiction.** — Since by virtue of this section, the City Council of the District of Columbia decided that full faith and credit was to be given to an

injunction entered by the Delaware Chancery Court prohibiting prosecutions against a Delaware insurance company, and where that court was to retain full jurisdiction over the matter, a case filed in D.C. against that company was dismissed. *Argon Fin. Group v. Marro*, 897 F. Supp. 568 (D.D.C. 1995).

### § 35-2823. Collection and list of assets.

(a) As soon as practicable after the liquidation order, but not later than 120 days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the Clerk of the Superior Court of the District of Columbia, and 1 copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(b) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(c) A submission to the court for disbursement of assets in accordance with § 35-2832 fulfills the requirements of subsection (a) of this section. (Oct. 15, 1993, D.C. Law 10-35, § 24, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2824. Fraudulent transfer prior to petition.

(a) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for the transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order such a transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(b)(1) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien

obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under § 35-2826(c).

(2) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(4) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(c) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (a) of this section if:

(1) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release; and

(2) Any part of the transaction took place within 1 year prior to the date of filing of the petition through which the receivership was commenced.

(d) Every person receiving any property from the insurer, or any benefit thereof, which is a fraudulent transfer under subsection (a) of this section shall be personally liable therefor and shall be bound to account to the liquidator. (Oct. 15, 1993, D.C. Law 10-35, § 25, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2819 and 35-2833.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2825. Fraudulent transfer after petition.

(a) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.



(b) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(1) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid, for which amount the transferee shall have a lien on the property so transferred.

(2) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon his or her order, with the same effect as if the petition were not pending.

(3) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith.

(4) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(c) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (a) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(d) Nothing in this chapter shall impair the negotiability of currency or negotiable instruments. (Oct. 15, 1993, D.C. Law 10-35, § 26, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2812, 35-2819, and 35-2833.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2826. Voidable preferences and liens.

(a)(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then the transfers shall be deemed preferences if made or suffered within 1 year before the filing of the successful petition for rehabilitation, or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) Any preference may be avoided by the liquidator if:

(A) The insurer was insolvent at the time of the transfer;

(B) The transfer was made within 4 months before the filing of the petition;

(C) The creditor receiving it or to be benefitted thereby or his agent acting with reference thereto had, at the time when the transfer was made,

reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such a position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(b)(1) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(2) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(c)(1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (b) of this section, if the consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose

of subsection (b) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(d) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (b) of this section to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(e) If any lien deemed voidable under subsection (a)(2) of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(f) The property affected by any lien deemed voidable under subsections (a) and (e) of this section shall be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order such a lien to be preserved for the benefit of the estate and the court may direct that such a conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(g) The Superior Court of the District of Columbia shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnified or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator, within a reasonable time as the court shall fix.

(h) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or, where the property is retained under subsection (g) of this section, to the extent of the amount paid to the liquidator.

(i) If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid



at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

(j) If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney-at-law for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provisions of subsection (a)(2)(D) of this section.

(k)(1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he or she has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is a reasonable cause to so believe if the transfer was made within 4 months before the date of filing of this successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (a) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(3) Nothing in this subsection shall prejudice any other claim by the liquidator against any person. (Oct. 15, 1993, D.C. Law 10-35, § 27, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2819, 35-2824, and 35-2833.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2827. Claims of holders of void or voidable rights.

(a) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter shall be allowed unless he or she surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under subsection (a) of this section by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused last filing under § 35-2833 if filed within 30 days from the date of the avoidance, or

within the further time allowed by the court under subsection (a) of this section. (Oct. 15, 1993, D.C. Law 10-35, § 28, 40 DCR 5773.)

**Section references.** — This section is referred to in § 35-2833.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2828. Setoffs.

(a) Mutual debts or mutual credits, whether arising out of 1 or more contracts between the insurer and another person in connection with any action or proceeding under this chapter, shall be set off and the balance only shall be allowed or paid, except as provided in subsection (b) of this section and § 35-2831.

(b) No setoff shall be allowed in favor of any person where:

(1) The obligation of the insurer to the person would not at the date of the filing of a petition for receivership entitle the person to share as a claimant in the assets of the insurer;

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(3) The obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;

(4) The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer;

(5) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is in any other way in the nature of a capital contribution; or

(6) The obligations between the person and the insurer arise from business where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

(c) The receiver shall provide persons with accounting statements identifying all debts which are due and payable. Where a person owes to the insurer amounts which are due and payable, against which the person asserts setoff of mutual credits which may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the amounts due and payable; provided that, notwithstanding § 35-2840 or any other provision of this chapter, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer. Prior to the termination of any proceeding under this chapter, the amount due the person shall be determined for the purpose of the receiver making a final refund, if any.

(d) These amendments shall be effective October 15, 1994 and shall apply to all contracts entered into, renewed, extended, or amended on or after that date, and to debts or credits arising from any business written or transactions occurring after the effective date pursuant to any such contract. For purposes of this section, any change in the terms of, or consideration for, any such contract shall be deemed an amendment. (Oct. 15, 1993, D.C. Law 10-35, § 29, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Application of Law 10-35.** — Section 60 of D.C. Law 10-35 provided that § 35-2828 shall apply 6 months from the effective date of this act and shall apply to all contracts entered into, renewed, extended, or amended, including any change in the terms of, or consideration for, such a contract on or after that date, and to

debts or credits arising from any business written or transaction occurring after the effective date pursuant to any contract, including those in existence prior to the effective date, and shall supersede any agreement or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer.

## § 35-2829. Assessments.

(a) As soon as practicable but not more than 2 years from the date of an order of liquidation under § 35-2816 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

- (1) The reasonable value of the assets of the insurer;
- (2) The insurer's probable total liabilities;
- (3) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
- (4) A recommendation as to whether or not an assessment should be made and in what amount.

(b)(1) Upon the basis of the report provided in subsection (a) of this section, including any supplements and amendments, the Superior Court of the District of Columbia may levy 1 or more assessments against all members of the insurer who are subject to assessment.

(2) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(c) After the levy of assessment under subsection (b) of this section, the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment therefor.

(d) The liquidator shall give notice of the order to show cause by publication and by first class mail to each member liable mailed to his or her last known address as it appears on the insurer's records, at least 20 days before the return date of the order to show cause.

(e)(1) If a member does not appear and serve duly verified objections upon the liquidator on or before the return date of the order to show cause under subsection (c) of this section, the court shall issue an order adjudging the member liable for the amount of the assessment against him or her pursuant to subsection (c) of this section, together with costs, and the liquidator shall have a judgment against the member.

(2) If on or before the return date, the member appears and serves duly verified objections upon the liquidator, the Commissioner may hear and determine the matter, or may appoint a referee to hear it, and issue such an order as the facts warrant. In the event that the Commissioner determines that the objections do not warrant relief from assessment, the member may request that the court review the matter and vacate the order to show cause.



(f) The liquidator may enforce any order or collect any judgment under subsection (e) of this section by any lawful means. (Oct. 15, 1993, D.C. Law 10-35, § 30, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in (e)(2).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2830. Reinsurer’s liability.

The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer’s obligation to the insurer’s estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation. (Oct. 15, 1993, D.C. Law 10-35, § 31, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2831. Recovery of premiums owed.

(a)(1) An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from such a person any part of an unearned premium that represents the commission of such a person. Credits or setoffs, or both, shall not be allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

(2) An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(b) Upon satisfactory evidence of a violation of this section, the Commissioner may pursue either one or both of the following courses of action:

(1) Suspend, revoke, or refuse to renew the licenses of the offending party or parties; or

(2) Impose a penalty of not more than \$1,000 for each act in violation of this section by the party or parties.

(c) Before the Commissioner takes any action as set forth in subsection (b) of this section, he or she shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least 10 days thereafter, when a hearing on the matter shall be held. After the hearing, or

upon failure of the accused to appear at the hearing, the Commissioner, if he or she finds the violation, shall impose any of the penalties under subsection (b) of this section as he or she deems advisable.

(d) When the Commissioner takes action in any or all of the ways set out in subsection (b) of this section, the party aggrieved may appeal from the action to the Superior Court of the District of Columbia. (Oct. 15, 1993, D.C. Law 10-35, § 32, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2828.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2832. Domiciliary liquidator’s proposal to distribute assets.

(a) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of the District of Columbia, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as the assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

(b) The proposal required by subsection (a) of this section shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in § 35-2840, classes 1 and 2;

(2) Disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(3) Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(4) The securing by the liquidator, from each of the associations entitled to disbursements pursuant to this section, of an agreement to return to the liquidator those assets, together with income earned on assets previously disbursed, required to pay claims of secured creditors and claims falling within the priorities established in § 35-2840 in accordance with those priorities. No bond shall be required of such an association; and

(5) A full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on the assets, and any other matter the court may direct.

(c) The liquidator’s proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which the associations could assert a claim against the

liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(d) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities, or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating the associations.

(e) Notice of the application shall be given to the association in and to the commissioners of insurance of each of the states. Such a notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least 30 days prior to submission of the application to the court. Action on the application may be taken by the court provided the above required notice has been given, and, provided further, that the liquidator's proposal complies with subsection (b)(1) and (2) of this section. (Oct. 15, 1993, D.C. Law 10-35, § 33, 40 DCR 5773.)

**Section references.** — This section is referred to in § 35-2823.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2833. Filing of claims.

(a) Proof of all claims shall be filed with the liquidator in the form required by § 35-2834 on or before the last day for filing specified in the notice required under § 35-2820, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

(b) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he or she were not late, to the extent that such a payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(1) The existence of the claim was not known to the claimant and that he or she filed his or her claim as promptly thereafter as reasonably possible after learning of it;

(2) A transfer to a creditor was avoided under §§ 35-2824 through 35-2826, or was voluntarily surrendered under § 35-2827, and that the filing satisfies the conditions of § 35-2827; or

(3) The valuation under § 35-2839 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(c) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where the payments were made and expenses incurred as provided by law.

(d) The liquidator may consider any claim filed late, which is not covered by subsection (b) of this section, and permit it to receive distributions which are



subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on his or her claim as is then being paid to claimants of any lower priority. This shall continue until his or her claim has been paid in full. (Oct. 15, 1993, D.C. Law 10-35, § 34, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2827, 35-2835, and 35-2854.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2834. Proof of claim.

(a) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

- (1) The particulars of the claim including the consideration given for it;
- (2) The identity and amount of the security on the claim;
- (3) The payments made on the debt, if any;
- (4) That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;
- (5) Any right of priority of payment or other specific right asserted by the claimants;
- (6) A copy of the written instrument which is the foundation of the claim; and
- (7) The name and address of the claimant and the attorney who represents him or her, if any.

(b) No claim need be considered or allowed if it does not contain all the information in subsection (a) of this section which may be applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.

(c) At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (a) of this section and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(d) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion, need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(e) All claims of a guaranty association or foreign guaranty association shall be in the form and contain the substantiation agreed to by the association and the liquidator. (Oct. 15, 1993, D.C. Law 10-35, § 35, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2820, 35-2833, and 35-2854.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**§ 35-2835. Special claims.**

(a) The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no contingency.

(b) A claim may be allowed even if contingent, if it is filed in accordance with § 35-2833. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(c) Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that the claims may be discounted at the legal rate of interest.

(d) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under § 35-2811 or § 35-2816. (Oct. 15, 1993, D.C. Law 10-35, § 36, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2816 and 35-2843.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**§ 35-2836. Special provisions for third party claims.**

(a) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(b) Whether or not the third party files a claim, the insured may file a claim on his or her own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by § 35-2820, whichever is later, he or she is an unexcused late filer.

(c) The liquidator shall make his or her recommendations to the court under § 35-2840 for the allowance of an insured's claim under subsection (b) of this section after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he or she shall reconsider the claim on the basis of additional information and amend his or her recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action, or paid by agreement, plus the reasonable costs and expense of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this

subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(d) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (c) of this section. If any insured's claim is subsequently reduced under subsection (c) of this section, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

(e) No claim may be presented under this section if it is, or may be, covered by any guaranty association or foreign guaranty association. (Oct. 15, 1993, D.C. Law 10-35, § 37, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2837. Disputed claims.

(a) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant, or his or her attorney, by first class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his or her objections with the liquidator. If no filing is made, the claimant may not further object to the determination.

(b) Whenever objections are filed with the liquidator and the liquidator does not alter his or her denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant, or his or her attorney, and to any other persons directly affected, not less than 10 nor more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his or her recommendation. (Oct. 15, 1993, D.C. Law 10-35, § 38, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2841 and 35-2854.

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2838. Claims of surety.

Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he or she discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution, however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount



of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person. The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association. (Oct. 15, 1993, D.C. Law 10-35, § 39, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2839. Secured creditor's claims.

(a) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to the creditors; or

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(b) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant shall surrender his or her security to the liquidator, the entire claim shall be allowed as if unsecured. (Oct. 15, 1993, D.C. Law 10-35, § 40, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2833 and 35-2856.

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2840. Priority of distribution.

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this chapter. Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including, but not limited to the following:

(A) The actual and necessary costs of preserving or recovering the assets of the insurer;

(B) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(C) Any necessary filing fees;

(D) The fees and mileage payable to witnesses;

(E) Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation; and

(F) The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.

(2) Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed 2 months of monetary compensation and represent payment for services performed within 1 year before the filing of the

petition for liquidation, or, if rehabilitation preceded liquidation, within 1 year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such a priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(3) Class 3. All claims under policies including the claims of the federal or any state or local government for losses incurred ("loss claims"), including third party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his or her employee shall be treated as a gratuity.

(4) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors, including claims of ceding and assuming companies in their capacity as general creditors.

(5) Class 5. Claims of the federal or any state or local government, except those under Class 3. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of the claims shall be postponed to the class of claims under paragraph (8) of this section.

(6) Class 6. Claims filed late or any other claims other than claims under paragraphs (7) and (8) of this section.

(7) Class 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(8) Class 8. The claims of shareholders or other owners in their capacity as shareholders. (Oct. 15, 1993, D.C. Law 10-35, § 41, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2819, 35-2828, 35-2832, 35-2836, 35-2843, 35-2853, and 35-2857.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2841. Liquidator's recommendations to the court.

(a) The liquidator shall review all claims duly filed in the liquidation and shall make any further investigation he or she deems necessary. He or she may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court, except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under § 35-2837. As soon as practicable, the liquidator shall present to the court a report of the claims against the

insurer with his or her recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(b) The court may approve, disapprove, or modify the report on claims by the liquidator. The reports not modified by the court within a period of 60 days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to § 35-2837. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits. (Oct. 15, 1993, D.C. Law 10-35, § 42, 40 DCR 5773.)

**Section references.** — This section is referred to in § 35-2854.

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2842. Distribution of assets.

Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court. (Oct. 15, 1993, D.C. Law 10-35, § 43, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2843. Unclaimed and withheld funds.

(a) All unclaimed funds subject to distribution remaining in the liquidator's hands when he or she is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the District of Columbia, and shall be paid without interest, except in accordance with § 35-2840, to the person entitled thereto or his or her legal representative upon proof satisfactory to the District of Columbia Treasurer of his or her right thereto. Any amount on deposit and not claimed at the time of the discharge of the liquidator shall be distributed in accordance with Chapter 2 of Title 42.

(b) All funds withheld under § 35-2836 and not distributed shall, upon discharge of the liquidator, be deposited with the District of Columbia Treasurer and paid by him or her in accordance with § 35-2840. Any sums remaining, which under § 35-2840 would revert to the undistributed assets of the insurer, shall be transferred to the District of Columbia Treasurer and become the property of the District under subsection (a) of this section, unless the Commissioner in his or her discretion petitions the court to reopen the



liquidation under § 35-2845. (Oct. 15, 1993, D.C. Law 10-35, § 44, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the last sentence of (b).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2844. Termination of proceedings.

(a) When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, deemed appropriate.

(b) Any other person may apply to the court at any time for an order under subsection (a) of this section. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney’s fee. (Oct. 15, 1993, D.C. Law 10-35, § 45, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

## § 35-2845. Reopening liquidation.

After the liquidation proceeding has been terminated and the liquidator discharged, the Commissioner or other interested party may at any time petition the Superior Court of the District of Columbia to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order. (Oct. 15, 1993, D.C. Law 10-35, § 46, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2843.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2846. Disposition of records during and after termination of liquidation.

Whenever it shall appear to the Commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court, and the court shall direct, what records should be retained for future reference and what records should be destroyed. (Oct. 15, 1993, D.C. Law 10-35, § 47, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2847. External audit of the receiver’s books.

The Superior Court of the District of Columbia may, as it deems desirable, order audits to be made of the books of the Commissioner relating to any receivership established under this chapter, and a report of each audit shall be filed with the Commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership. (Oct. 15, 1993, D.C. Law 10-35, § 48, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” twice in the first sentence.

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2848. Conservation of property of foreign or alien insurers found in the District of Columbia.

(a) If a domiciliary liquidator has not been appointed, the Commissioner may apply to the Superior Court of the District of Columbia by verified petition for an order directing him or her to act as conservator to conserve the property of an alien insurer not domiciled in the District, or a foreign insurer, on any one or more of the following grounds:

- (1) Any of the grounds in § 35-2810;
- (2) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;
- (3) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent; or
- (4)(A) That its certificate of authority to do business in the District has been revoked or that none was ever issued; and
- (B) That there are residents of the District with outstanding claims or outstanding policies.

(b) When an order is sought under subsection (a) of this section, the court shall cause the insurer to be given notice and time to respond reasonable under the circumstances.

(c) The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the Clerk of the Superior Court of the District of Columbia shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(d) The conservator may at any time petition for, and the court may grant, an order under § 35-2849 to liquidate assets of a foreign or alien insurer under

conservation, or, if appropriate, for an order under § 35-2851 to be appointed ancillary receiver.

(e) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and control of its business. The court may also make such a finding and issue such an order at any time upon motion of any interested party, but, if the motion is denied, all costs shall be assessed against the interested party. (Oct. 15, 1993, D.C. Law 10-35, § 49, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2849 and 35-2850.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the introductory paragraph of (a).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2849. Liquidation of property of foreign or alien insurers found in the District of Columbia.

(a) If no domiciliary receiver has been appointed, the Commissioner may apply to the Superior Court of the District of Columbia by verified petition for an order directing him or her to liquidate the assets, found in the District, of a foreign insurer or an alien insurer not domiciled in the District, on any of the following grounds:

(1) Any of the grounds in § 35-2810 or § 35-2815; or

(2) Any of the grounds specified in § 35-2848(a)(2) through (4).

(b) When an order is sought under subsection (a) of this section, the court shall cause the insurer to be given notice and time to respond reasonable under the circumstances.

(c) If it appears to the court that the best interests of creditors, policyholders, and the public so require, the court may issue an order to liquidate in whatever terms it shall deem appropriate. The filing or recording of the order with the Clerk of the Superior Court of the District of Columbia or the recorder of deeds of the District of Columbia shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(d) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under § 35-2851. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under § 35-2851.

(e) On the same grounds as are specified in subsection (a) of this section, the Commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer’s assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the Commissioner deems desirable for the protection of the policyholders and creditors in the District.



(f) The court may order the Commissioner, when he or she has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of the District against the insurer under rules concerning liquidation of insurers under this chapter as are otherwise compatible with the provisions of this section. (Oct. 15, 1993, D.C. Law 10-35, § 50, 40 DCR 5773; Sept. 8, 1995, D.C. Law 11-36, § 2, 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 2, 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2848 and 35-2850.

**Effect of amendments.** — D.C. Law 11-90 substituted “District of Columbia” for “county in which the principal business of the company is located, or the county in which its principal office or place of business is located” in the second sentence of (c).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” once in the introductory paragraph of (a), twice in (e), and once in (f).

**Temporary amendment of section.** — D.C. Law 11-36 substituted “District of Columbia” for “county in which the principal business of the company is located, or the county in which its principal office or place of business is located” in the second sentence of (c).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 2 of the Insurance Omnibus Congressional Recess Emergency Amendment

Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11-36.** — Law 11-36, the “Insurance Omnibus Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the “Insurance Omnibus Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2850. Domiciliary liquidators in other states.

(a) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under § 35-2851(c), be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, agents’ balances, and all of the books, accounts, and other records of the insurer located in the District. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. He also shall have the right to recover all other assets of the insurer located in this state, subject to § 35-2851.

(b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the Commissioner shall be vested by operation of law with the title to all of the property, contracts, and right of action, and all of the books, accounts and other records of the insurer located in the District, at the same time that the domiciliary liquidator is vested with title in the domicile. The Commissioner may petition for a conservation or liquidation order under § 35-2848 or § 35-2849, or for an ancillary receivership under § 35-2851, or, after approval by the Superior Court of the District of Columbia, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(c) Claimants residing in the District may file claims with the liquidator or ancillary receiver, if any, in the District or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings. (Oct. 15, 1993, D.C. Law 10-35, § 51, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2801.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" twice in (b).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2851. Ancillary formal proceedings.

(a) If a domiciliary liquidator has been appointed for an insurer not domiciled in the District, the Commissioner may file a petition with the Superior Court of the District of Columbia requesting appointment as ancillary receiver in the District:

(1) If he or she finds that there are sufficient assets of the insurer located in the District to justify the appointment of an ancillary receiver; or

(2) If the protection of creditors or policyholders in the District so requires.

(b) The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with the recorder of deeds in the District imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

(c) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in the District may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in the District. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in the District, and shall pay the necessary expenses of the proceedings. He or she shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in the District.

(d) When a domiciliary liquidator has been appointed in the District, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (c) of this section for ancillary receivers appointed in the District. (Oct. 15, 1993, D.C. Law 10-35, § 52, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2801, 35-2848, 35-2849, and 35-2850.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in the introductory paragraph of (a).

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2852. Ancillary summary proceedings.

The Commissioner, in his or her sole discretion, may institute proceedings under §§ 35-2808 and 35-2809 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in the District. (Oct. 15, 1993, D.C. Law 10-35, § 53, 40 DCR 5773; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(z)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent.”

**Legislative history of Law 10-35.** — See note to § 35-2801.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2801.

## § 35-2853. Claims of nonresidents against insurers domiciled in the District of Columbia.

(a) In a liquidation proceeding begun in the District against an insurer domiciled in the District, claimants residing in foreign countries or in states not reciprocal states must file claims in the District, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(b) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in the District as provided in this chapter, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of the District as provided in § 35-2854(b) with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and priority against special deposits or other security located in ancillary states, but shall not be conclusive with respect to priorities against general assets under § 35-2840. (Oct. 15, 1993, D.C. Law 10-35, § 54, 40 DCR 5773.)



**Section references.** — This section is referred to in § 35-2801.

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2854. Claims of residents against insurers domiciled in reciprocal states.

(a) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within the District may file claims either with the ancillary receiver, if any, in the District, or with the domiciliary liquidator. Claims must be filed by the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(b) Claims belonging to claimants residing in the District may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in the District. If a claimant elects to prove his or her claim in the District, the claimant shall file his or her claim with the liquidator in the manner provided in §§ 35-2833 and 35-2834. The ancillary receiver shall make his or her recommendation to the court as under § 35-2841. He or she shall also arrange a date for hearing if necessary under § 35-2837 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of his or her intention to contest the claim, he or she shall be entitled to appear or to be represented in any proceeding in the District involving the adjudication of the claim.

(c) The final allowance of the claim by the courts of the District shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in the District. (Oct. 15, 1993, D.C. Law 10-35, § 55, 40 DCR 5773.)

**Section references.** — This section is referred to in §§ 35-2801 and 35-2853.

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2855. Attachment, garnishment, and levy of execution.

During the pendency in this, or any other state, of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution shall be commenced or maintained in the District against the delinquent insurer or its assets. (Oct. 15, 1993, D.C. Law 10-35, § 56, 40 DCR 5773.)

**Section references.** — This section is referred to in § 35-2801.

**Legislative history of Law 10-35.** — See note to § 35-2801.

### § 35-2856. Interstate priorities.

(a) In a liquidation proceeding in the District involving 1 or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of

reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

(b) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(c) The owner of a secure claim against an insurer for which a liquidator has been appointed in this or any other state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security in accordance with § 35-2839, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. (Oct. 15, 1993, D.C. Law 10-35, § 57, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

### **§ 35-2857. Subordination of claims for noncooperation.**

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in the District any assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under § 35-2840(7). (Oct. 15, 1993, D.C. Law 10-35, § 58, 40 DCR 5773.)

**Legislative history of Law 10-35.** — See note to § 35-2801.

## CHAPTER 29. RISK RETENTION.

Sec.	Sec.
35-2901. Definitions.	35-2908. Restrictions on insurance purchased by purchasing groups.
35-2902. Risk retention groups chartered in the District.	35-2909. Purchasing group taxation.
35-2903. Risk retention groups not chartered in the District.	35-2910. Administrative and procedural authority regarding risk retention groups and purchasing groups.
35-2904. Restrictions.	35-2911. Duty of agents or brokers to obtain license.
35-2905. Countersignatures not required.	35-2912. Binding effect of orders issued in United States District Court.
35-2906. Purchasing groups — Exemption from certain laws.	
35-2907. Notice and registration requirements of purchasing groups.	

**§ 35-2901. Definitions.**

For the purposes of this chapter, the term:

(1) “Commissioner” means the Commissioner of Insurance and Securities, or the commissioner, director, or superintendent of insurance in any other state.

(A) Any person who performs that work; or

(B) Any person who hires an independent contractor to perform that work, but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(1A) “Completed operations liability” means liability arising out of installation, maintenance, or repair of any product at a site which is not owned or controlled by:

(2) “District” means the District of Columbia.

(3) “Domicile”, for purposes of determining the state in which a purchasing group is domiciled, means:

(A) For a corporation, the state in which the purchasing group is incorporated; and

(B) For an unincorporated entity, the state of its principal place of business.

(4) “Hazardous financial condition” means that, based on its present reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(A) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims;

(B) Pay other obligations in the normal course of business; or

(C) Meet the minimum capital and surplus requirements of licensed property and casualty insurance companies.

(5) “Insurance” means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of the District.

(6) “Liability” means legal liability for damages, including costs of defense, legal costs, and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of any business (whether profit or nonprofit), trade, product, services (including professional services), premises,



or operations, or any activity of any state or local government, or any agency or political subdivision thereof. The term “liability” does not include personal risk liability and an employer’s liability with respect to its employees other than legal liability under the Federal Employers’ Liability Act (45 U.S.C. § 51 et seq.).

(7) “NAIC” means National Association of Insurance Commissioners.

(8) “Personal risk liability” means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraph (10) of this section.

(9) “Plan of operation or a feasibility study” means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:

(A) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(B) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(C) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(D) Pro forma financial statements and projections;

(E) Appropriate opinions by a qualified, independent casualty actuary including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(F) Identification of management, underwriting, and claims procedures marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;

(G) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each state; and

(H) Other matters as may be prescribed by the insurance commissioner of the jurisdiction in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that jurisdiction.

(10) “Product liability” means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred.

(11) “Purchasing group” means any group which:

(A) Has as one of its purposes the purchase of liability insurance on a group basis;

(B) Purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C) of this paragraph;

(C) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) Is domiciled in any state.

(12) "Risk retention group" means any corporation or other limited liability association:

(A) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) Which is organized for the primary purpose of conducting the activity described under subparagraph (A) of this paragraph;

(C) Which is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or which, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance commissioner of at least 1 state that it satisfied the capitalization requirements of that state, except that any group shall be considered a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as these terms were defined in the federal Product Liability Risk Retention Act of 1981, approved September 25, 1981 (95 Stat. 949; 15 U.S.C. § 3901 *et seq.*), before the date of the enactment of the Liability Risk Retention Act of 1986, approved October 27, 1986 (100 Stat. 3170; 15 U.S.C. § 3901 *et seq.*);

(D) Repealed;

(E) Which does not exclude any person from membership in the group solely to provide members of the group a competitive advantage over that person;

(F) Which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group, and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;

(G) Whose members are engaged in businesses or activities similar or related with respect to the liability of which the members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

(H) Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group, or any members of the other group, which is engaged in business or

activities so that the group or a member meets the requirement described in paragraph (9)(G) of this section from membership in the risk retention group which provides the reinsurance; and

(I) The name of which includes the phrase "Risk Retention Group".

(13) "State" means any state of the United States or the District of Columbia.

(14) Repealed. (Oct. 21, 1993, D.C. Law 10-46, § 2, 40 DCR 6082; Mar. 17, 1994, D.C. Law 10-76, § 4(a), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 4(a), 41 DCR 1005; Sept. 8, 1995, D.C. Law 11-36, §§ 3(a)-(c), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, §§ 3(a)-(c), 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(aa)(1), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-2903, 35-2907, and 35-4001.

**Effect of amendments.** — D.C. Law 11-90 rewrote (12)(C); repealed former (12)(D); and substituted "(9)(G)" for "(9)(F)" in (12)(H)(ii).

D.C. Law 11- (Act 11-524) inserted (1A); and repealed (14).

**Temporary amendment of section.** — D.C. Law 11-36 rewrote (12)(C); repealed former (12)(D); and substituted "(9)(G)" for "(9)(F)" in (12)(H)(ii).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(a) through (c) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 3(a) through (c) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-46.** — Law 10-46, the "Risk Retention Act of 1993," was introduced in Council and assigned Bill No. 10-124, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-91 and transmitted to both Houses of Congress for its review. D.C. Law 10-46 became effective on October 21, 1993.

**Legislative history of Law 10-76.** — Law 10-76, the "Insurance Omnibus Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the "Insurance Omnibus Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Legislative history of Law 11-36.** — Law 11-36, the "Insurance Omnibus Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the "Insurance Omnibus Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11



(Act 11-524) is projected to become law on May 22, 1997.

**Mayor authorized to issue rules.** — Section 14 of D.C. Law 10-46 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-46, the Risk Retention Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-2902. Risk retention groups chartered in the District.

(a)(1) A risk retention group shall be chartered and licensed to write only liability insurance pursuant to this chapter, and, except as provided elsewhere in this chapter, must comply with all of the laws, rules, regulations, and requirements applicable to an insurer chartered and licensed in the District and with § 35-2903 to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of the District.

(2) All risk retention groups chartered in the District shall file with the Mayor and the NAIC an annual statement in a form prescribed by the NAIC and in any other form required by the Mayor.

(b) Before it may offer insurance in any state, each risk retention group shall also submit to the Mayor a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days of any change. The group shall not offer any additional kinds of liability insurance, in the District or in any other state, until a revision of the plan or study is approved by the Commissioner.

(c)(1) At the time of filing its application for a charter, the risk retention group shall provide to the Commissioner, in summary form, the following information:

(A) The identity of the initial members of the group;

(B) The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;

(C) The amount and nature of initial capitalization;

(D) The coverages to be afforded; and

(E) The states in which the group intends to operate.

(2) Upon receipt of this information, the Mayor shall forward the information to the NAIC. Providing notification to the NAIC is in addition to and shall not be sufficient to satisfy the requirements of § 35-2903 or any other sections of this chapter. (Oct. 21, 1993, D.C. Law 10-46, § 3, 40 DCR 6082; Mar. 17, 1994, D.C. Law 10-76, § 4(b)(1), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 4(b), 41 DCR 1005; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(aa)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2903.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in the last sentence in (b) and in the introductory language of (c)(1).

**Legislative history of Law 10-46.** — See note to § 35-2901.

**Legislative history of Law 10-76.** — See note to § 35-2901.

**Legislative history of Law 10-103.** — See note to § 35-2901.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2901.

**§ 35-2903. Risk retention groups not chartered in the District.**

Risk retention groups chartered and licensed in states other than the District seeking to do business as a risk retention group in the District shall comply with the laws of the District as follows:

(1)(A) Before offering insurance in the District, a risk retention group shall submit to the Mayor on a form prescribed by the NAIC:

(i) A statement identifying the state or states in which the retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and any other information, including information on its membership, as the Mayor may require to verify that the risk retention group is qualified under § 35-2901(12); and

(ii) A copy of its plan of operations or feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. § 3901 et seq.), before October 27, 1986, and which was offered before the date by any risk retention group which had been chartered and operating for not less than 3 years before the date.

(B) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by § 35-2902(b) at the same time that the revision is submitted to the commissioner of its chartering state.

(C) The risk retention group shall submit a statement of registration, for which a filing fee shall be determined by the Mayor, proof of compliance with the service of process provisions of § 35-102.

(2) Any risk retention group doing business in the District shall submit to the Mayor:

(A) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the NAIC;

(B) A copy of each examination of the risk retention group as certified by the Commissioner or public official conducting the examination;

(C) Upon request by the Commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(D) Any information required to verify its continuing qualification as a risk retention group under § 35-2901(12).

(3)(A) Each risk retention group shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or

located within the District, and shall report to the Commissioner the net premiums written for risks resident or located within the District. Such a risk retention group shall be subject to taxation, and any related applicable fines and penalties, on the same basis as a foreign admitted insurer.

(B) To the extent licensed agents or brokers are utilized pursuant to § 35-2911, they shall report to the Commissioner the premiums for direct business for risks resident or located within the District which these licensees have placed with or on behalf of a risk retention group not chartered in the District of Columbia.

(C) To the extent that insurance agents or brokers are utilized pursuant to § 35-2911, the agent or broker shall keep a complete and separate record of all policies procured from each risk retention group, which record shall be open to examination by the Commissioner, as provided by the insurance laws of the District of Columbia. These records shall contain each policy and each kind of insurance provided thereunder, and shall include the following:

- (i) The limit of liability;
- (ii) The time period covered;
- (iii) The effective date;
- (iv) The name of the risk retention group which issued the policy;
- (v) The gross premium charged; and
- (vi) The amount of return premiums, if any.

(4) Any risk retention group, its agents, and representatives shall comply with District law governing fraud or deceptive practices. If the Mayor seeks an injunction regarding this conduct, the injunction shall be obtained from a court of competent jurisdiction.

(5) Any risk retention group shall comply with the laws governing the proper transaction of insurance business as provided by the District.

(6) Any risk retention group must submit to an examination by the Commissioner to determine its financial condition if the superintendent or Commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination within 60 days after a request by the Commissioner of the District. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the NAIC's Examiner Handbook. Cost of the examination shall be borne by the risk retention group.

(7) Every application form for insurance from a risk retention group, and every policy, on its front and declaration page issued by a risk retention group, shall contain in 10-point type the following notice:

#### “NOTICE

“This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.”.

(8) The following acts by a risk retention group are prohibited:

(A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and



(B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(9) After April 26, 1994, risk retention groups shall not be allowed to do business in the District if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) The terms of any insurance policy issued by risk retention groups shall not provide, or be construed to provide, coverage prohibited generally by a statute of the District or declared unlawful by the highest court of the District whose law applies to such a policy.

(11) A risk retention group not chartered in the District and doing business in the District shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under paragraph (6) of this section.

(12) A risk retention group that violates any provision of this chapter will be subject to fines and penalties, including revocation of its right to do business in the District, applicable to licensed insurers generally.

(13) In addition to complying with the requirements of this section, any risk retention group operating in the District prior to enactment of this chapter shall, within 30 days after October 21, 1993, comply with paragraph (1) of this section. (Oct. 21, 1993, D.C. Law 10-46, § 4, 40 DCR 6082; March 17, 1994, D.C. Law 10-76, § 4(c), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 4(c), 41 DCR 1005; Mar. 21, 1995, D.C. Law 10-233, § 8, 42 DCR 24; May 16, 1995, D.C. Law 10-255, § 47, 41 DCR 5193; Sept. 8, 1995, D.C. Law 11-36, §§ 3(d)-(f), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, §§ 3(d)-(f), 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(aa)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2902.

**Effect of amendments.** — D.C. Law 10-233 substituted “proof of compliance with the service of process provisions of § 35-102” for “designating the Mayor as its agent for the purpose of receiving service of legal documents or process” in (1)(C).

D.C. Law 10-255 corrected the subsection designation regarding the amendment to this section in D.C. Law 10-103.

D.C. Law 11-90, in the introductory language of (1)(A), added “on a form prescribed by the NAIC”; added the second sentence in (4); and deleted the former second sentence in (5).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout (2)(B), (2)(C), and (3), twice in (6).

**Temporary amendment of section.** — D.C. Law 11-36 added “on a form prescribed by the NAIC” to the introductory language of (1)(A); added the second sentence in (4); and deleted the former second sentence in (5).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(d) through (f) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 3(d) through (f) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-46.** — See note to § 35-2901.

**Legislative history of Law 10-76.** — See note to § 35-2901.

**Legislative history of Law 10-103.** — See note to § 35-2901.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned

Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Legislative history of Law 11-36.** — See note to § 35-2901.

**Legislative history of Law 11-90.** — See note to § 35-2901.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2901.

## § 35-2904. Restrictions.

(a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in the District, nor shall any risk retention group or its insureds or claimants against its insureds, receive any benefit from such a fund for claims arising under the insurance policies issued by the risk retention group.

(b) When a purchasing group obtains insurance covering its members from an insurer not authorized in this state, or a risk retention group, no risks, resident or located, shall be covered by any insurance guaranty fund or similar mechanism in the District.

(c) When a purchasing group obtains insurance covering its members’ risks from an authorized insurer, only risks resident or located in the District shall be covered by the District property and liability guaranty fund. (Oct. 21, 1993, D.C. Law 10-46, § 5, 40 DCR 6082.)

**Legislative history of Law 10-46.** — See note to § 35-2901.

## § 35-2905. Countersignatures not required.

A policy of insurance issued to a risk retention group, or any member of that group, shall not be required to be countersigned as otherwise provided in the District of Columbia insurance law. (Oct. 21, 1993, D.C. Law 10-46, § 6, 40 DCR 6082.)

**Legislative history of Law 10-46.** — See note to § 35-2901.

## § 35-2906. Purchasing groups — Exemption from certain laws.

A purchasing group and its insurer or insurers shall be subject to all applicable laws of the District, except that a purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would:

(1) Prohibit the establishment of a purchasing group;

(2) Make it unlawful for an insurer to provide, or offer to provide, insurance on a basis providing to a purchasing group or its members advan-

tages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) Prohibit a purchasing group or its members from purchasing insurance on a group basis described in paragraph (2) of this section;

(4) Prohibit a purchasing group from obtaining insurance on a group because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) Require that a purchasing group must have a minimum number of common ownership or affiliation, or certain legal form;

(6) Require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) Otherwise discriminate against a purchasing group or any of its members; or

(8) Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in the District. (Oct. 21, 1993, D.C. Law 10-46, § 7, 40 DCR 6082.)

**Legislative history of Law 10-46.** — See note to § 35-2901.

## § 35-2907. Notice and registration requirements of purchasing groups.

(a) A purchasing group which intends to do business in the District shall, prior to doing business, furnish notice to the Commissioner which shall:

(1) Identify the state in which the group is domiciled;

(2) Identify all other states in which the group intends to do business;

(3) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(4) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of each company;

(5) Specify the method by which, and the person or persons, if any, through whom, the insurance will be offered to its members whose risks are resident or located in the District;

(6) Identify the principal place of business of the group; and

(7) Provide any other information required by the Commissioner to verify that the purchasing group is qualified under § 35-2901(11).

(b) A purchasing group shall, within 10 days, notify the Commissioner of any changes in any of the items set forth in subsection (a) of this section.

(c) The purchasing group shall register with the District and provide proof of compliance with the service of process provisions of § 35-102, for which a filing fee shall be determined by the Commissioner, except that these requirements shall not apply in the case of a purchasing group which only purchases insurance that was authorized under the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. § 3901 *et seq.*), and:

(1) Which was domiciled in any state of the United States before April 1, 1986, and after October 27, 1986;



(2) Which purchased insurance from an insurance carrier licensed in any state before October 27, 1986, and since October 27, 1986; or

(3) Which was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. § 3901 *et seq.*), before October 27, 1986.

(d) Each purchasing group that is required to give notice pursuant to subsection (a) of this section shall also furnish information required by the Commissioner to:

(1) Verify that the entity qualifies as a purchasing group;

(2) Determine where the purchasing group is located; and

(3) Determine appropriate tax treatment.

(e) Any purchasing group which was doing business in the District prior to the enactment of this chapter shall, within 30 days after October 21, 1993, furnish notice to the Mayor pursuant to the provisions of subsection (a) of this section and furnish the information required pursuant to subsections (b) and (c) of this section. (Oct. 21, 1993, D.C. Law 10-46, § 8, 40 DCR 6082; Mar. 21, 1995, D.C. Law 10-233, § 9, 42 DCR 24; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(aa)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-2911.

**Effect of amendments.** — D.C. Law 10-233 substituted “provide proof of compliance with the service of process provisions of § 35-102,” for “designate the Superintendent, or other appropriate authority, as its agent solely for the purpose of receiving service of legal documents or process,” in (c).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” throughout the section.

**Legislative history of Law 10-46.** — See note to § 35-2901.

**Legislative history of Law 10-233.** — See note to § 35-2903.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2901.

## § 35-2908. Restrictions on insurance purchased by purchasing groups.

(a) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such a state.

(b) A purchasing group which obtains liability insurance from an insurer not admitted in the District or a risk retention group shall inform each of the members of the group that has a risk resident or located in the District that such a risk is not protected by an insurance insolvency guaranty fund in the District, and that the risk retention group or the insurer may not be subject to all the insurance laws and regulations of the District.

(c) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(d) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance. (Oct. 21, 1993, D.C. Law 10-46, § 9, 40 DCR 6082.)

**Legislative history of Law 10-46.** — See note to § 35-2901.

## § 35-2909. Purchasing group taxation.

Premium taxes and taxes on premiums paid for coverage of risks resident or located in the District by a purchasing group or any members of the purchasing groups shall be:

(1) Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and

(2) Paid first by the insurance source, and if not by the source by the agent or broker for the purchasing group, and if not by the agent or broker then by the purchasing group, and if not by the purchasing group then by each of its members. (Oct. 21, 1993, D.C. Law 10-46, § 10, 40 DCR 6082.)

**Legislative history of Law 10-46.** — See note to § 35-2901.

## § 35-2910. Administrative and procedural authority regarding risk retention groups and purchasing groups.

The Commissioner is authorized to make use of any of the powers established under the Insurance Code of the District of Columbia to enforce the laws of the District of Columbia not specifically preempted by the federal Liability Risk Retention Act of 1986 (15 U.S.C. § 3901 *et seq.*), including the Commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the Commissioner can rely on the procedural laws of the District. The injunctive authority of the Commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction. (Oct. 21, 1993, D.C. Law 10-46, § 11, 40 DCR 6082; Apr. 9, 1997, D.C. Law 11-255, § 41, 44 DCR 1271; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(aa)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11-255 validated a previously made technical correction in the name of the federal act in the first sentence.

D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Legislative history of Law 10-46.** — See note to § 35-2901.

**Legislative history of Law 11-255.** — Law 11-255, the "Second Technical Amendments Act

of 1996," was introduced in Council and assigned Bill No. 11-, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-2901.

## § 35-2911. Duty of agents or brokers to obtain license.

(a) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in the District from a risk retention group unless the person, firm, association, or corporation is licensed as an insurance agent or broker in accordance with the District of Columbia insurance licensing laws.

(b)(1) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in the District for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person, firm, association, or corporation is licensed as an insurance agent or broker in accordance with the District of Columbia insurance licensing laws.

(2) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in the District for any member of a purchasing group under a purchasing group's policy unless the person, firm, association, or corporation is licensed as an insurance agent or broker in accordance with the District of Columbia insurance licensing laws.

(3) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in the District on behalf of a purchasing group located in this state unless the person, firm, association, or corporation is licensed as a surplus lines agent or excess line broker in accordance with the District of Columbia insurance licensing laws.

(c) For purposes of acting as an agent or broker for a risk retention or purchasing group pursuant to subsections (a) and (b) of this section, the requirement of residence in the District shall not apply.

(d) Every person, firm, association, or corporation licensed pursuant to the provisions of Chapter 28 of Title 47, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by § 35-2908(b) in the case of a risk retention group and § 35-2907(c) in the case of a purchasing group. (Oct. 21, 1993, D.C. Law 10-46, § 12, 40 DCR 6082; Sept. 8, 1995, D.C. Law 11-36, § 3(g), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 3(g), 42 DCR 7155.)

**Section references.** — This section is referred to in § 35-2903.

**Effect of amendments.** — D.C. Law 11-90 substituted “§ 35-2908(b)” for “§ 35-2907(c)” in (d).

**Temporary amendment of section.** — D.C. Law 11-36 substituted “§ 35-2908(b)” for “§ 35-2907(c)” in (d).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For tem-

porary amendment of section, see § 3(g) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 3(g) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-46.** — See note to § 35-2901.

**Legislative history of Law 11-36.** — See note to § 35-2901.

**Legislative history of Law 11-90.** — See note to § 35-2901.



**§ 35-2912. Binding effect of orders issued in United States District Court.**

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating in any state, or in all states or in any territory or possession of the United States, upon finding that such a group is in hazardous financial or financially impaired condition shall be enforceable in the courts of the state. (Oct. 21, 1993, D.C. Law 10-46, § 13, 40 DCR 6082.)

**Legislative history of Law 10-46.** — See note to § 35-2901.

## CHAPTER 30. MANAGING GENERAL AGENTS.

Sec.

35-3001. Definitions.

35-3002. Licensure.

35-3003. Required contract provisions.

Sec.

35-3004. Duties of insurers.

35-3005. Examination authority.

35-3006. Penalties and liabilities.

**§ 35-3001. Definitions.**

For the purposes of this chapter, the term:

(1) “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.

(2) “District” means the District of Columbia.

(3) “Insurer” means any person, firm, association, or corporation duly licensed in the District as an insurance company pursuant to §§ 35-404 and 35-1505.

(4)(A) “Managing general agent” means any person, firm, association, or corporation who:

(i) Negotiates and binds ceding reinsurance contracts on behalf of an insurer; or

(ii) Manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office; and

(iii) Acts as an agent for such an insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premiums equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year, and, in addition, adjusts or pays claims in excess of an amount determined by the Mayor, or negotiates reinsurance on behalf of the insurer.

(B) Notwithstanding the above definition, the term “managing general agent” shall not apply to the following persons for the purposes of this chapter:

(i) An employee of the insurer;

(ii) A United States manager of the United States branch of an alien insurer;

(iii) An underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to Chapter 37 of this title, or its predecessor, and whose compensation is not based on the volume of premiums written; or

(iv) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(5) “Producers” means an insurance broker or brokers or any other person, firm, association, or corporation, when for any compensation, commission or other thing of value, such person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

(6) "Underwrite" means the authority to accept or reject risks on behalf of the insurer. (Oct. 21, 1993, D.C. Law 10-41, § 2, 40 DCR 6014; Apr. 18, 1996, D.C. Law 11-110, § 41, 43 DCR 530.)

**Section references.** — This section is referred to in § 35-3004.

**Effect of amendments.** — D.C. Law 11-110 validated previously made subparagraph and sub-subparagraph designation changes in (4).

**Legislative history of Law 10-41.** — Law 10-41, the "Managing General Agents Act of 1993," was introduced in Council and assigned Bill No. 10-125, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 5, 1993, it was assigned Act No. 10-76 and transmitted to both Houses of Congress for its review. D.C. Law 10-41 became effective on October 21, 1993.

**Legislative history of Law 11-110.** — Law 11-110, the "Technical Amendments Act of

1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Mayor authorized to issue rules.** — Section 8 of D.C. Law 10-41 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-41, the Managing General Agents Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3002. Licensure.

(a) No person, firm, association, or corporation shall act in the capacity of a managing general agent with respect to risks located in the District for an insurer licensed in the District, unless the person is a licensed broker in the District.

(b) No person, firm, association, or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in the District with respect to risks located outside the District, nor shall an insurer utilize the services of such a managing general agent, unless the person is licensed as a broker in the District, which license may be a nonresident license, pursuant to the provisions of this chapter.

(c) The Mayor may require a bond in an amount acceptable to him or her for the protection of the insurer.

(d) The Mayor may require the managing general agent to maintain an errors and omissions policy. (Oct. 21, 1993, D.C. Law 10-41, § 3, 40 DCR 6014; May 16, 1995, D.C. Law 10-255, § 29(a), 41 DCR 5193.)

**Effect of amendments.** — D.C. Law 10-255 validated a previously made change in (b).

**Legislative history of Law 10-41.** — See note to § 35-3001.

**Legislative history of Law 10-255.** — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

## § 35-3003. Required contract provisions.

No person, firm, association, or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in



force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, specifies the division of the responsibilities, and which contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer will be held in a separate account by the managing general agent in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than 3 months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer, and the Mayor shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the Mayor. These records shall be retained according to §§ 35-204, 35-637, and Chapter 36 of this title.

(5) The contract may not be assigned in whole or part by the managing general agent.

(6) Appropriate underwriting guidelines are required, including:

- (A) The maximum annual premium volume;
- (B) The basis of the rates to be charged;
- (C) The types of risks which may be written;
- (D) Maximum limits of liability;
- (E) Applicable exclusions;
- (F) Territorial limitations;
- (G) Policy cancellation provisions; and
- (H) The maximum policy period.

(7) The insurer shall have the right to cancel or not renew any policy of insurance subject to the applicable laws and regulations of the District governing the cancellation and nonrenewal of insurance policies.

(8) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(A) All claims must be reported to the company within 48 hours of receipt.

(B) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

- (i) Has the potential to exceed an amount determined by the Mayor or exceeds the limit set by the company, whichever is less;
- (ii) Involves a coverage dispute;
- (iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than 6 months; or

(v) Is closed by payment of an amount set by the Mayor or an amount set by the company, whichever is less.

(C) All claim files will be the joint property of the insurer and managing general agent. Upon an order of liquidation of the insurer, however, these files shall become the sole property of the insurer or its estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(D) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(9) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(10) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until 1 year after they are earned for property insurance business and 5 years after they are earned on casualty business and not until the profits have been verified pursuant to § 35-3004.

(11) The managing general agent shall not:

(A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(B) Commit the insurer to participate in insurance or reinsurance syndicates;

(C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;

(D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(F) Permit its subproducer to serve on the insurer's board of directors;

(G) Jointly employ an individual who is employed with the insurer; or

(H) Appoint a submanaging general agent. (Oct. 21, 1993, D.C. Law 10-41, § 4, 40 DCR 6014; May 16, 1995, D.C. Law 10-255, § 29(b), 41 DCR 5193.)

**Effect of amendments.** — D.C. Law 10-255, validated a previously made change in (4).

**Legislative history of Law 10-41.** — See note to § 35-3001.

**Legislative history of Law 10-255.** — See note to § 35-3002.

## § 35-3004. Duties of insurers.

(a) The insurer shall have on file an independent financial examination, in a form acceptable to the Mayor, of each managing general agent with which it has done business.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(c) The insurer shall periodically (at least semiannually) conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

(e) Within 30 days of entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the Mayor. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the Mayor may request.

(f) An insurer shall review its books and records each quarter to determine if any producer has, because of § 35-3001(4), become a managing general agent as defined in that section. If the insurer determines that a producer has become a managing general agent pursuant to the above, the insurer shall promptly notify the producer and the Mayor of the determination, and the insurer and producer shall fully comply with the provisions of this chapter within 30 days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of its managing general agents. This subsection shall not apply to relationships governed by Chapter 37 of this title or, if applicable, Chapter 40 of this title. (Oct. 21, 1993, D.C. Law 10-41, § 5, 40 DCR 6014; May 16, 1995, D.C. Law 10-255, § 29(c), 41 DCR 5193.)

**Section references.** — This section is referred to in § 35-3003.

**Effect of amendments.** — D.C. Law 10-255 substituted “§ 35-3001(4)” for “§ 35-3001(3)” in (f).

**Legislative history of Law 10-41.** — See note to § 35-3001.

**Legislative history of Law 10-255.** — See note to § 35-3002.



## § 35-3005. Examination authority.

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer. (Oct. 21, 1993, D.C. Law 10-41, § 6, 40 DCR 6014.)

**Legislative history of Law 10-41.** — See note to § 35-3001.

## § 35-3006. Penalties and liabilities.

(a) If the Mayor determines that the managing general agent or any other person has not materially complied with this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the Mayor may order:

- (1) For each separate violation, a penalty in an amount not exceeding \$10,000, or not more than \$25,000 for intentional violations;
- (2) Revocation or suspension of the producer's license; and
- (3) If it was found that because of material noncompliance the insurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors, or other appropriate relief.

(b) The decision, determination, or order of the Mayor pursuant to subsection (a) of this section shall be subject to judicial review pursuant to subchapter I of Chapter 15 of Title 1, §§ 35-427 and 35-432, and §§ 35-1547 and 35-1548.

(c) Nothing in this section shall affect the right of the Mayor to impose any other penalties provided in the insurance law of the District.

(d) Nothing in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors. (Oct. 21, 1993, D.C. Law 10-41, § 7, 40 DCR 6014; March 17, 1994, D.C. Law 10-76, § 5(a), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 5, 41 DCR 1005.)

**Legislative history of Law 10-41.** — See note to § 35-3001.

**Legislative history of Law 10-76.** — Law 10-76, the "Insurance Omnibus Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the "Insurance Omnibus Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

## CHAPTER 31. REINSURANCE INTERMEDIARY.

Sec.

35-3101. Definitions.

35-3102. Licensure.

35-3103. Required contract provisions; reinsurance intermediary-brokers.

35-3104. Books and records; reinsurance intermediary brokers.

35-3105. Duties of insurers utilizing the services of a reinsurance intermediary-broker.

Sec.

35-3106. Required contract provisions; reinsurance intermediary-managers.

35-3107. Prohibited acts.

35-3108. Duties of reinsurers utilizing the services of a reinsurance-intermediary-manager.

35-3109. Examination authority.

35-3110. Penalties and liabilities.

**§ 35-3101. Definitions.**

For the purposes of this chapter, the term:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Controlling person" means any person, firm, association, or corporation who directly or indirectly has the power to direct, or cause to be directed, the management, control, or activities of the reinsurance intermediary.

(3) "District" means the District of Columbia.

(4) "Holding Company Act" means the Holding Company System Act of 1993, Chapter 37 of this title.

(5) "Insurer" means any person, firm, association, or corporation duly licensed in the District pursuant to the applicable provisions of District insurance law as an insurer.

(6) "Licensed producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of insurance law.

(7) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in paragraphs (8) and (9) of this section.

(8) "Reinsurance intermediary-broker" ("RB") means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(9) "Reinsurance intermediary-manager" ("RM") means any person, firm, association, or corporation that has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a RM, manager, or other similar term. Notwithstanding the above, for the purposes of this chapter, the following persons shall not be considered a RM, with respect to such a reinsurer:

(A) An employee of the reinsurer;

(B) A United States manager of the United States branch of an alien reinsurer;

(C) An underwriting manager that, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Chapter 37 of this title, and whose compensation is not based on the volume of premiums written; or

(D) The manager of a group, association, pool, or organization of insurers that engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner or superintendent or commissioner of insurance of the state in which the manager's principal business office is located.

(10) "Reinsurer" means any person, firm, association, or corporation duly licensed in the District pursuant to the applicable provisions of insurance law of the District as an insurer with the authority to assume reinsurance.

(11) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this chapter.

(12) "Qualified United States financial institution" means an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States, any state, or the District;

(B) Is regulated, supervised, and examined by United States federal, state, or District authorities having regulatory authority over banks and trust companies; and

(C) Has been determined, by either the Mayor or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Mayor. (Oct. 21, 1993, D.C. Law 10-47, § 2, 40 DCR 6093; May 16, 1995, D.C. Law 10-255, § 30, 41 DCR 5193.)

**Section references.** — This section is referred to in § 35-3103.

**Effect of amendments.** — D.C. Law 10-255 validated a previously made change in (4).

**Legislative history of Law 10-47.** — Law 10-47, the "Reinsurance Intermediary Act of 1993," was introduced in Council and assigned Bill No. 10-126, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-92 and transmitted to both Houses of Congress for its review. D.C. Law 10-47 became effective on October 21, 1993.

**Legislative history of Law 10-255.** — Law 10-255, the "Technical Amendments Act of

1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Mayor authorized to issue rules.** — Section 12 of D.C. Law 10-47 provided that the Mayor may, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-47, the Reinsurance Intermediary Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3102. Licensure.

(a) No person, firm, association, or corporation shall act as a reinsurance broker in the District if the reinsurance broker maintains an office either



directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(1) In the District, unless the reinsurance broker is a licensed broker in the District; or

(2) In another state, unless the reinsurance broker is a licensed broker in the District or another state having a law substantially similar to this chapter or the reinsurance broker is licensed in the District as a nonresident reinsurance intermediary.

(b) No person, firm, association, or corporation shall act as a reinsurance manager:

(1) For a reinsurer domiciled in the District unless the reinsurance manager is a licensed broker in the District;

(2) In the District, if the reinsurance manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in the District, unless the reinsurance manager is a licensed broker in the District; or

(3) In another state for a nondomestic insurer, unless the reinsurance manager is a licensed broker in the District or another state having a law substantially similar to this chapter or the person is licensed in the District as a nonresident reinsurance intermediary.

(c) The Mayor may require a reinsurance manager subject to subsection (b) of this section to:

(1) File a bond in an amount from an insurer acceptable to the Mayor for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the Mayor.

(d)(1) The Mayor may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this chapter. Such a license issued to a firm or association will authorize all the members of the firm or association, and any designated employees, to act as reinsurance intermediaries under the license, and all those persons shall be named in the application and any subsequent supplements. Such a license issued to a corporation shall authorize all of the officers, and any designated employees and directors, to act as reinsurance intermediaries on behalf of the corporation, and all those persons shall be named in the application and any subsequent supplements.

(2) If the applicant for a reinsurance intermediary license is a nonresident, such an applicant, as a condition precedent to receiving or holding a license, shall comply with the service of process provisions of § 35-102. Such a licensee shall promptly notify the Mayor in writing of every change in its designated agent for service of process, and no change shall become effective until acknowledged by the Mayor.

(e) The Mayor may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of such an applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for

revocation or suspension of such a license, or has failed to comply with any prerequisite for the issuance of such a license. Upon written request, the Mayor will furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to subchapter II of Chapter 15 of Title 1.

(f) Licensed attorneys at law of the District, when acting in their professional capacity, shall be exempt from this section. (Oct. 21, 1993, D.C. Law 10-47, § 3, 40 DCR 6093; March 17, 1994, D.C. Law 10-76, § 6(a), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 6(a), 41 DCR 1005; Mar. 21, 1995, D.C. Law 10-233, § 10, 42 DCR 24.)

**Section references.** — This section is referred to in §§ 35-3105 and 35-3108.

**Effect of amendments.** — D.C. Law 10-233 substituted “comply with the service of process provisions of § 35-102.” for “designate the Superintendent as agent for service of process in the manner, and with the same legal effect, provided by this act for designation of service of process upon unauthorized insurers, and also shall furnish the Mayor with the name and address of a resident of the District upon whom notices or orders of the Mayor of process affecting the nonresident reinsurance intermediary may be served.” in (d)(2).

**Legislative history of Law 10-47.** — See note to § 35-3101.

**Legislative history of Law 10-76.** — Law 10-76, the “Insurance Omnibus Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the “Insurance Omnibus Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

## § 35-3103. Required contract provisions; reinsurance intermediary-brokers.

Transactions between a reinsurance broker and the insurer it represents shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

(1) The insurer may terminate the reinsurance broker’s authority at any time.

(2) The reinsurance broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance broker, and remit all funds due to the insurer within 30 days of receipt.

(3) All funds collected for the insurer’s account will be held by the reinsurance broker in a fiduciary capacity in a bank which is a qualified United

States financial institution as defined in § 35-3101.

(4) The reinsurance broker will comply with § 35-3104.

(5) The reinsurance broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded. (Oct. 21, 1993, D.C. Law 10-47, § 4, 40 DCR 6093.)

**Legislative history of Law 10-47.** — See note to § 35-3101.

### **§ 35-3104. Books and records; reinsurance intermediary brokers.**

(a) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance broker, the reinsurance broker will keep a complete record for each transaction showing:

(1) The type of contract, limits, underwriting restrictions, classes, or risks and territory;

(2) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

(3) Reporting and settlement requirements of balances;

(4) Rate used to compute the reinsurance premium;

(5) Names and addresses of assuming reinsurers;

(6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance broker;

(7) Related correspondence and memoranda;

(8) Proof of placement;

(9) Details regarding retrocessions handled by the reinsurance broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) Financial records, including, but not limited to, premium and loss accounts; and

(11) When the reinsurance broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(B) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(b) The insurer will have access and the right to copy and audit all accounts and records maintained by the reinsurance broker related to its business in a form usable by the insurer. (Oct. 21, 1993, D.C. Law 10-47, § 5, 40 DCR 6093.)

**Section references.** — This section is referred to in § 35-3103.

**Legislative history of Law 10-47.** — See note to § 35-3101.



**§ 35-3105. Duties of insurers utilizing the services of a reinsurance intermediary-broker.**

(a) An insurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance broker on its behalf unless the person is licensed as required by § 35-3102(a).

(b) An insurer may not employ an individual who is employed by a reinsurance broker with which it transacts business, unless the reinsurance broker is under common control with the insurer and subject to Chapter 37 of this title.

(c) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance broker with which it transacts business. (Oct. 21, 1993, D.C. Law 10-47, § 6, 40 DCR 6093.)

**Legislative history of Law 10-47.** — See note to § 35-3101.

**§ 35-3106. Required contract provisions; reinsurance intermediary-managers.**

Transactions between a reinsurance manager and the reinsurer it represents shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before a reinsurer assumes or cedes business through such a producer, a true copy of the approved contract shall be filed with the Mayor for approval. The contract shall, at a minimum, provide that:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance manager. The reinsurer may immediately suspend the authority of the reinsurance manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account will be held by the reinsurance manager in a fiduciary capacity in a bank which is a qualified United States financial institution. The reinsurance manager may retain no more than 3 months estimated claims payments and allocated loss adjustment expenses. The reinsurance manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance manager, the reinsurance manager will keep a complete record for each transaction showing:

(A) The type of contract, limits, underwriting restrictions, classes, or risks, and territory;

(B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(C) Reporting and settlement requirements of balances;

(D) Rate used to compute the reinsurance premium;

(E) Names and addresses of ceding insurers;

(F) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance manager;

(G) Related correspondence and memoranda;

(H) Proof of placement;

(I) Details regarding retrocessions handled by the RM, as permitted by § 35-3108(d), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(J) Financial records, including, but not limited to, premium and loss accounts; and

(K) When the reinsurance manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance manager related to its business in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the reinsurance manager.

(7) The reinsurance manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates shall be set forth, as well as the terms and purposes of commissions, charges, and other fees which the reinsurance manager may levy against the reinsurer.

(9) If the contract permits the reinsurance manager to settle claims on behalf of the reinsurer:

(A) All claims will be reported to the reinsurer in a timely manner.

(B) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed the lesser of an amount determined by the Mayor or the limit set by the reinsurer;

(ii) Involves a coverage dispute;

(iii) May exceed the reinsurance manager's claims settlement authority;

(iv) Is open for more than 6 months; or

(v) Is closed by payment of the lesser of an amount set by the Mayor or an amount set by the reinsurer.

(C) All claim files will be the joint property of the reinsurer and reinsurance manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the reinsurance manager shall have reasonable access to and the right to copy the files on a timely basis.

(D) Any settlement authority granted to the reinsurance manager may be terminated for cause upon the reinsurer's written notice to the reinsurance manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance manager, the interim profits will not be paid until 1 year after the end of each underwriting period for property business, and 5 years after the end of each underwriting period for casualty business, or a later period set by the Mayor for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to § 35-3108(c).

(11) The reinsurance manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall periodically, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance manager.

(13) The reinsurance manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting. (Oct. 21, 1993, D.C. Law 10-47, § 7, 40 DCR 6093; Sept. 8, 1995, D.C. Law 11-36, § 4(a), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 4(a), 42 DCR 7155.)

**Effect of amendments.** — D.C. Law 11-90 substituted "ceding insurers" for "reinsurers" in (4)(E).

**Temporary amendment of section.** — D.C. Law 11-36 substituted "ceding insurers" for "reinsurers" in (4)(E).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 5(a) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 4(a) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-47.** — See note to § 35-3101.

**Legislative history of Law 11-36.** — Law

11-36, the "Insurance Omnibus Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the "Insurance Omnibus Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.



**§ 35-3107. Prohibited acts.**

The reinsurance manager shall not:

(1) Cede retrocessions on behalf of the reinsurer, except that the reinsurance manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for retrocessions. These guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(2) Commit the reinsurer to participate in reinsurance syndicates;

(3) Appoint any broker without assuring that the broker is lawfully licensed to transact the type of reinsurance for which he or she is appointed;

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(5) Collect any payment from a retrocessionaire, or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;

(6) Jointly employ an individual who is employed by the reinsurer unless the reinsurance manager is under common control with the reinsurer subject to Chapter 37 of this title; or

(7) Appoint a sub-reinsurance manager. (Oct. 21, 1993, D.C. Law 10-47, § 8, 40 DCR 6093.)

**Legislative history of Law 10-47.** — See note to § 35-3101.

**§ 35-3108. Duties of reinsurers utilizing the services of a reinsurance-intermediary-manager.**

(a) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance manager on its behalf unless the person is licensed as required by § 35-3102(b).

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance manager which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the Mayor.

(c) If a reinsurance manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance manager. This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance manager.

(e) Within 30 days of termination of a contract with a reinsurance manager, the reinsurer shall provide written notification of the termination to the Commissioner.

(f) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its reinsurance manager. This subsection shall not apply to relationships governed by Chapter 37 of this title. (Oct. 21, 1993, D.C. Law 10-47, § 9, 40 DCR 6093; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(bb), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-3106.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (e).

**Legislative history of Law 10-47.** — See note to § 35-3101.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Coun-

cil and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

## § 35-3109. Examination authority.

(a) A reinsurance intermediary shall be subject to examination by the Mayor. The Mayor shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the Mayor.

(b) A reinsurance manager may be examined as if it were the reinsurer. (Oct. 21, 1993, D.C. Law 10-47, § 10, 40 DCR 6093.)

**Legislative history of Law 10-47.** — See note to § 35-3101.

## § 35-3110. Penalties and liabilities.

(a) If the Mayor determines that the reinsurer intermediary or any other person has not materially complied with this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the Mayor may order:

(1) For each separate violation, a penalty in an amount not exceeding \$10,000;

(2) Revocation or suspension of the producer’s license; and

(3) If it was found that because of material noncompliance the insurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors, or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 28 of this title, and the receiver appointed under that order determines that the reinsurance intermediary or any other person has not materially complied with this chapter, or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage, the

receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the Mayor to impose any other penalties provided in District insurance law.

(d) Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to those persons. (Oct. 21, 1993, D.C. Law 10-47, § 11, 40 DCR 6093; March 17, 1994, D.C. Law 10-76, § 6(b), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 6(b), 41 DCR 1005; Sept. 8, 1995, D.C. Law 11-36, §§ 4(b), 4(c), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, §§ 4(b), 4(c), 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(bb), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11-90 substituted “Superintendent” for “Commissioner” in (a)(3); and substituted “reinsurance intermediary” for “managing general agent” in (b).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a)(3).

**Temporary amendment of section.** — D.C. Law 11-36 substituted “Superintendent” for “Commissioner” in (a)(3); and substituted “reinsurance intermediary” for “managing general agent” in (b).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 5(b) and (c)

of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 4(b) and (c) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-47.** — See note to § 35-3101.

**Legislative history of Law 10-76.** — See note to § 35-3102.

**Legislative history of Law 10-103.** — See note to § 35-3102.

**Legislative history of Law 11-36.** — See note to § 35-3106.

**Legislative history of Law 11-90.** — See note to § 35-3106.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-3108.



## CHAPTER 32. ANNUAL AUDITED FINANCIAL REPORTS.

Sec.

- 35-3201. Definitions.
- 35-3202. Filing and extensions for filing of annual audited financial reports.
- 35-3203. Contents of annual audited financial report.
- 35-3204. Designation of independent certified public accountant.
- 35-3205. Qualifications of independent certified public accountant.
- 35-3206. Consolidated or combined audits.
- 35-3207. Scope of examination and report of independent certified public accountant.

Sec.

- 35-3208. Notification of adverse financial condition.
- 35-3209. Report on significant deficiencies in internal controls.
- 35-3210. Accountant's letter of qualifications.
- 35-3211. Definition, availability, and maintenance of certified public accountant workpapers.
- 35-3212. Exemptions and effective dates.
- 35-3213. Canadian and British companies.
- 35-3214. Applicability.

## § 35-3201. Definitions.

For the purposes of this chapter, the term:

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) "Audited financial report" means and includes those items specified in § 35-3203.

(3) "Insurer" means a licensed insurer or authorized company which has authority from the Mayor to do business in the District of Columbia as provided under §§ 35-404 and 35-1505.

(4) "NAIC" means the National Association of Insurance Commissioners. (Oct. 21, 1993, D.C. Law 10-48, § 2, 40 DCR 6102.)

**Section references.** — This section is referred to in § 35-3214.

**Legislative history of Law 10-48.** — Law 10-48, the "Annual Audited Financial Reports Act of 1993," was introduced in Council and assigned Bill No. 10-127, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-93 and transmitted to both Houses of Congress for

its review. D.C. Law 10-48 became effective on October 21, 1993.

**Mayor authorized to issue rules.** — Section 16 of D.C. Law 10-48 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-48, the Annual Audited Financial Reports Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3202. Filing and extensions for filing of annual audited financial reports.

(a) All insurers shall have an annual audit prepared by an independent certified public accountant and shall file an audited financial report with the Mayor on or before June 1st for the year ended December 31st immediately preceding. The Mayor may require an insurer to file an audited financial report earlier than June 1st with 90 days advance notice to the insurer.

(b) Extensions of the June 1st filing date may be granted by the Mayor for 30-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting the extension and determination by the Mayor of good cause for an extension. The request for extension must be submitted in writing not less than 10 days prior to the due date in sufficient detail to permit the Mayor to make an informed decision with respect to the requested extension. (Oct. 21, 1993, D.C. Law 10-48, § 3, 40 DCR 6102.)

**Section references.** — This section is referred to in §§ 35-3213 and 35-3214.

**Legislative history of Law 10-48.** — See note to § 35-3201.

### § 35-3203. Contents of annual audited financial report.

The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flow, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Mayor. The annual audited financial report shall include the following:

- (1) Report of an independent certified public accountant;
- (2) Balance sheet reporting admitted assets, liabilities, capital, and surplus;
- (3) Statement of operations;
- (4) Statement of cash flows;
- (5) Statement of changes in capital and surplus;
- (6) Notes to financial statements, including notes required by the appropriate NAIC annual statement instructions and any other notes required by generally accepted accounting principles. The notes shall also include:

(A) A reconciliation of differences, if any, between the audited statements to be filed with the Mayor and the NAIC annual statement filed pursuant to the insurance laws of the District of Columbia; and

(B) A summary of ownership and relationships of the insurer and all affiliated companies; and

(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Mayor, and the financial statement shall be comparative, presenting the amounts as of December 31st of the current year and the amounts as of the immediately preceding December 31st. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. (Oct. 21, 1993, D.C. Law 10-48, § 4, 40 DCR 6102; Sept. 8, 1995, D.C. Law 11-36, § 5(a), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 5(a), 42 DCR 7155.)

**Section references.** — This section is referred to in § 35-3201.

**Effect of amendments.** — D.C. Law 11-90 substituted “and the NAIC annual statement” for “the Superintendent of Insurance, and the NAIC” in (6)(A).

**Temporary amendment of section.** — D.C. Law 11-36 substituted “and the NAIC annual statement” for “the Superintendent of Insurance, and the NAIC” in (6)(A).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its

having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 6(a) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 5(a) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-48.** — See note to § 35-3201.

**Legislative history of Law 11-36.** — Law 11-36, the “Insurance Omnibus Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted

on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the “Insurance Omnibus Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

## § 35-3204. Designation of independent certified public accountant.

(a) Each insurer required by this chapter to file an annual audited financial report, within 60 days after becoming subject to the requirement, shall register in writing with the Mayor the name and address of the independent certified public accountant or accounting firm retained to conduct the required annual audit. Insurers not retaining an independent certified public accountant on October 21, 1993, shall register the name and address of their retained certified public accountant not less than 6 months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the Mayor, stating that the accountant is aware of the provisions of the insurance laws and rules of the District of Columbia that relate to accounting and financial matters, and affirming that he or she will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Mayor, specifying any exceptions he or she believes appropriate.

(c) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall, within 5 business days, notify the Mayor of this event. The insurer shall, within 10 business days of the above notification, also furnish the Mayor with a separate letter stating whether in the 24 months preceding the event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, that is between personnel of the insurer responsible for presentation of its financial



statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also request in writing that the former accountant furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter, and, if not, stating the reasons that he does not agree. The insurer shall furnish the responsive letter from the former accountant to the Mayor together with its own. (Oct. 21, 1993, D.C. Law 10-48, § 5, 40 DCR 6102.)

**Section references.** — This section is referred to in § 35-3213.

**Legislative history of Law 10-48.** — See note to § 35-3201.

### § 35-3205. Qualifications of independent certified public accountant.

(a) The Mayor shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant.

(b) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants, Chapter 1 of Title 2, and rules promulgated by the District of Columbia Board of Accountancy.

(c) No partner or other person responsible for rendering a report may act in that capacity for more than 7 consecutive years. Following any period of service that person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of 2 years. An insurer may make application to the Mayor for relief from the above rotation requirement on the basis of unusual circumstances. The Mayor may consider the following factors in determining if the relief should be granted:

- (1) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
- (2) Premium volume of the insurer; or
- (3) Number of jurisdictions in which the insurer transacts business.

The requirements of this subsection shall become effective 2 years after the enactment of this chapter.

(d) The Mayor shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report prepared, in whole or in part, by any natural person who:

- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, approved October 15, 1970 (84 Stat. 941; 18 U.S.C. § 1961 *et seq.*), or any dishonest conduct or practices under federal or state law;
  - (2) Has been found to have violated the insurance laws of the District of Columbia with respect to any previous reports submitted under this chapter;
- or

(3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(e) The Mayor, as provided in §§ 35-405 and 35-1506, may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter. (Oct. 21, 1993, D.C. Law 10-48, § 6, 40 DCR 6102; Sept. 8, 1995, D.C. Law 11-36, §§ 5(b), 5(c), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, §§ 5(b), 5(c), 42 DCR 7155.)

**Effect of amendments.** — D.C. Law 11-90 inserted “with the American Institute of Certified Public Accountants” in (a); and rewrote (d)(1).

**Temporary amendment of section.** — D.C. Law 11-36 inserted “with the American Institute of Certified Public Accountants” in (a); and rewrote (d)(1).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For tem-

porary amendment of section, see § 6(b) and (c) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 5(b) and (c) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-48.** — See note to § 35-3201.

**Legislative history of Law 11-36.** — See note to § 35-3203.

**Legislative history of Law 11-90.** — See note to § 35-3203.

## § 35-3206. Consolidated or combined audits.

An insurer may make written application to the Mayor for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer’s reserves and the insurer cedes all of its direct and assumed business to the pool. In these cases, a column consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.

(2) Amounts for each insurer subject to this section shall be stated separately.

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis.

(4) Explanations of consolidating and eliminating entries shall be included.

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers. (Oct. 21, 1993, D.C. Law 10-48, § 7, 40 DCR 6102.)

**Legislative history of Law 10-48.** — See note to § 35-3201.

### § 35-3207. Scope of examination and report of independent certified public accountant.

Financial statements furnished pursuant to § 35-3203 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the NAIC as the independent certified public accountant deems necessary. (Oct. 21, 1993, D.C. Law 10-48, § 8, 40 DCR 6102; Sept. 8, 1995, D.C. Law 11-36, § 5(d), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 5(d), 42 DCR 7155.)

**Effect of amendments.** — D.C. Law 11-90 added the first sentence.

**Temporary amendment of section.** — D.C. Law 11-36 added the first sentence.

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 6(d) of the Insurance Omnibus Emergency Amendment

Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 5(d) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-48.** — See note to § 35-3201.

**Legislative history of Law 11-36.** — See note to § 35-3203.

**Legislative history of Law 11-90.** — See note to § 35-3203.

### § 35-3208. Notification of adverse financial condition.

(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within 5 business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Mayor as of the balance sheet date currently under examination, or that the insurer does not meet the minimum capital and surplus requirement pursuant to §§ 35-608 and 35-1516, as of that date. An insurer who has received a report pursuant to this subsection shall forward a copy of the report to the Mayor within 5 business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Mayor. If the independent certified public accountant fails to receive the evidence within the required 5-business-day period, the independent certified public accountant shall furnish to the Mayor a copy of its report within the next 5 business days.

(b) No independent public accountant shall be liable in any manner to any person for any statement made in connection with subsection (a) of this section if the statement is made in good faith in compliance with subsection (a) of this section.

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this chapter, becomes aware of facts which might have



affected his report, the accountant shall take action prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants. (Oct. 21, 1993, D.C. Law 10-48, § 9, 40 DCR 6102; Sept. 8, 1995, D.C. Law 11-36, § 5(e), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 5(e), 42 DCR 7155.)

**Effect of amendments.** — D.C. Law 11-90 substituted “accountant” for “Mayor” preceding “shall take action” in (c).

**Temporary amendment of section.** — D.C. Law 11-36 substituted “accountant” for “Mayor” preceding “shall take action” in (c).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 6(e) of the

Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 5(e) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-48.** — See note to § 35-3201.

**Legislative history of Law 11-36.** — See note to § 35-3203.

**Legislative history of Law 11-90.** — See note to § 35-3203.

## § 35-3209. Report on significant deficiencies in internal controls.

In addition to the annual audited financial statements, each insurer shall furnish the Mayor with a written report prepared by the accountant describing significant deficiencies in the insurer’s internal control structure noted by the accountant during the audit. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies, known as reportable conditions, noted during a financial statement audit to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Mayor within 60 days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the accountant’s report. (Oct. 21, 1993, D.C. Law 10-48, § 10, 40 DCR 6102.)

**Section references.** — This section is referred to in § 35-3214.

**Legislative history of Law 10-48.** — See note to § 35-3201.

## § 35-3210. Accountant’s letter of qualifications.

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating that:

(1) The accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the rules of the District of Columbia Board of Accountancy.

(2) The background and experience of the accountant in general is listed, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this chapter shall be construed as prohibiting the accountant from utilizing the staff he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(3) The accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this chapter and that the Mayor will be relying on this information in the monitoring and regulation of the financial position of insurers.

(4) The accountant consents to the requirements of § 35-3211 and that the accountant consents and agrees to make available for review by the Mayor, his or her designee or his or her appointed agent, the workpapers, as defined in § 35-3211.

(5) The accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(6) The accountant is in compliance with the requirements of § 35-3205. (Oct. 21, 1993, D.C. Law 10-48, § 11, 40 DCR 6102; Sept. 8, 1995, D.C. Law 11-36, § 5(f), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 5(f), 42 DCR 7155.)

**Section references.** — This section is referred to in § 35-3214.

**Effect of amendments.** — D.C. Law 11-90 added “and is a member in good standing in the American Institute of Certified Public Accountants” in (5).

**Temporary amendment of section.** — D.C. Law 11-36 added “and is a member in good standing in the American Institute of Certified Public Accountants” in (5).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 6(f) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 5(f) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-48.** — See note to § 35-3201.

**Legislative history of Law 11-36.** — See note to § 35-3203.

**Legislative history of Law 11-90.** — See note to § 35-3203.

## § 35-3211. Definition, availability, and maintenance of certified public accountant workpapers.

(a) For purposes of this chapter, the term “workpapers” are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her examination of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her examination of the financial statements of an insurer and which support his or her opinion thereof.

(b) Every insurer required to file an audited financial report pursuant to this chapter shall require the accountant to make available for review by the Mayor's examiners all workpapers prepared in the conduct of his or her examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, or at any other reasonable place designated by the Mayor. The insurer shall require that the accountant retain the audit workpapers and communications until the Mayor has filed a report on examination covering the period of the audit but no longer than 7 years from the date of the audit report.

(c) The Mayor may make and retain photocopies of pertinent audit workpapers. The review by the Mayor's examiners shall be considered investigations and all working papers and communications obtained during the course of the investigations shall be afforded the same confidentiality as other examination workpapers generated by the Mayor. (Oct. 21, 1993, D.C. Law 10-48, § 12, 40 DCR 6102.)

**Section references.** — This section is referred to in § 35-3210.

**Legislative history of Law 10-48.** — See note to § 35-3201.

## § 35-3212. Exemptions and effective dates.

(a) Upon written application of any insurer, the Mayor may grant an exemption from compliance with this chapter if the Mayor finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer and the public interest would not be unduly compromised by the exemption. An exemption may be granted at any time, and from time to time for a specified period or periods. Within 10 days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with those rules pertaining to administrative hearing procedures as the Mayor may prescribe.

(b) Domestic insurers retaining a certified public accountant on October 21, 1993 who qualify as independent shall comply with this chapter for the year ending December 31, 1993, and each year thereafter, unless the Mayor permits otherwise.

(c) Domestic insurers not retaining a certified public accountant, who qualifies as independent, on October 21, 1993, shall meet the following schedule for compliance unless the Mayor permits otherwise:

- (1) As of December 31, 1993, file with the Mayor:
  - (A) Report of independent certified public accountant;
  - (B) Audited balance sheet; and
  - (C) Notes to audited balance sheet.

(2) For the year ending December 31, 1993, and each year thereafter, these insurers shall file with the Mayor all reports required by this chapter.

(d) Foreign insurers shall comply with this chapter for the year ending December 31, 1993, and each year thereafter, unless the Mayor permits otherwise. (Oct. 21, 1993, D.C. Law 10-48, § 13, 40 DCR 6102.)



**Legislative history of Law 10-48.** — See note to § 35-3201.

### § 35-3213. Canadian and British companies.

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by these companies with their domiciliary supervision authority duly audited by an independent chartered accountant.

(b) For Canadian and British insurers, the letter required in § 35-3204 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Mayor pursuant to § 35-3202 and shall affirm that the opinion expressed is in conformity with these requirements. (Oct. 21, 1993, D.C. Law 10-48, § 14, 40 DCR 6102; May 16, 1995, D.C. Law 10-255, § 31, 41 DCR 5193.)

**Effect of amendments.** — D.C. Law 10-255 validated a previously made change in (b).

**Legislative history of Law 10-48.** — See note to § 35-3201.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

### § 35-3214. Applicability.

(a) Every insurer, as defined in § 35-3201, shall be subject to this chapter. Insurers having direct premiums written in the District of Columbia of less than \$1,000,000 in any calendar year and having less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of any calendar year shall be exempt from this chapter for that year, unless the Mayor makes a specific finding that compliance is necessary for the Mayor to carry out statutory responsibilities, except that insurers having assumed premiums pursuant to contracts or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

(b) Foreign or alien insurers filing audited financial reports in another state pursuant to the other state’s requirement of audited financial reports which has been found by the Mayor to be substantially similar to the requirements of this chapter are exempt from this chapter if:

(1) A copy of the audited financial report, report on significant deficiencies in internal controls, and the accountant’s letter of qualifications which are filed with the other states are filed with the Mayor in accordance with the filing dates specified in §§ 35-3202, 35-3209, and 35-3210, respectively. Canadian insurers may submit accounts’ reports as filed with the Canadian Dominion Department of Insurance.

(2) A copy of any notification of adverse financial condition report filed with the other states is filed with the Mayor within the time specified in § 35-3208.

(c) This chapter shall not prohibit, preclude, or in any way limit the Mayor from ordering, conducting, or performing examinations of insurers under the

rules and the practices and procedures of the District of Columbia. (Oct. 21, 1993, D.C. Law 10-48, § 15, 40 DCR 6102.)

**Legislative history of Law 10-48.** — See note to § 35-3201.

## CHAPTER 33. CREDIT FOR REINSURANCE.

Sec.	Sec.
35-3301. Credit allowed a domestic ceding insurer.	35-3303. Qualified United States financial institutions.
35-3302. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.	

**§ 35-3301. Credit allowed a domestic ceding insurer.**

(a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (1), (2), (3), (4), or (5) of this subsection. If meeting the requirements of paragraph (3) or (4) of this subsection, the requirements of paragraph (6) of this subsection must also be met.

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in the District of Columbia.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in the District of Columbia. An accredited reinsurer is one which:

(A) Files evidence of its submission to the District of Columbia jurisdiction with the Commissioner;

(B) Submits to the District of Columbia authority to examine its books and records;

(C) Is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in the District or at least one state; and

(D) Files annually with the Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement, and:

(i) Maintains a surplus as regards policyholders in an amount which is not less than \$20,000,000 and whose accreditation has not been denied by the Commissioner within 90 days of its submission; or

(ii) Maintains a surplus as regards policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the Commissioner.

(3)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or, in the case of a United States branch of an alien assuming insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute, and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000;

(ii) Submits to the authority of the District of Columbia to examine its books and records; and



(iii) Complies with the requirements of paragraph (6) of this subsection.

(B) The requirement of subparagraph (A) of this paragraph does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(4)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in § 35-3303(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assignees and successors in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000. In the case of a group of underwriters, which includes individuals, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(B) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subparagraph (A) of this paragraph, has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation, submits to the District of Columbia authority to examine its books and records and bears the expense of the examination, and has aggregate policyholders' surplus of \$10,000,000,000, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group. The group shall maintain a joint trustee surplus of which \$100,000,000 shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(C) The trust shall be established in a form approved by the Commissioner of Insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assignees, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the

Commissioner. This trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(D) No later than February 28th of each year the trustees of the trust shall report to the Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31st.

(E) Credit shall not be allowed under this paragraph unless the assuming insurer complies with the requirements of paragraph (6) of this subsection.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (1), (2), (3), or (4) of this subsection but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation in that jurisdiction.

(6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance of the District of Columbia, the credit permitted by paragraphs (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal; and

(B) To comply with the service of process provisions of § 35-102 in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) No credit shall be allowed to a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner after notice and hearing.

(c) This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement. (Oct. 15, 1993, D.C. Law 10-36, § 2, 40 DCR 5812; Mar. 21, 1995, D.C. Law 10-233, § 11, 42 DCR 24; Sept. 8, 1995, D.C. Law 11-36, § 6, 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 6, 42 DCR 7155; Apr. 9, 1997, D.C. Law 11-255, § 42, 44 DCR 1271; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(cc), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-3302 and 35-4703.

**Effect of amendments.** — D.C. Law 10-233 substituted "To comply with the service of process provisions of § 35-102" for "To designate the Superintendent or a designated attorney as its true and lawful attorney upon whom may be served any lawful process" in (a)(6)(B).

D.C. Law 11-90 substituted "paragraph (1), (2), (3), (4), or (5)" for "paragraph (2), (3), (4), or

(5)" in the first sentence of the introductory language of (a).

D.C. Law 11-255 validated a previously made technical correction in (a)(5).

D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" throughout the section.

**Temporary amendment of section.** — D.C. Law 11-36 substituted "paragraph (1), (2), (3), (4), or (5)" for "paragraph (2), (3), (4), or (5)"



in the first sentence of the introductory language of (a).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 7 of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 6 of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-36.** — Law 10-36, the “Law on Credit for Reinsurance Act of 1993,” was introduced in Council and assigned Bill No. 10-128, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-69 and transmitted to both Houses of Congress for its review. D.C. Law 10-36 became effective on October 15, 1993.

**Legislative history of Law 10-233.** — Law 10-233, the “Insurers Service of Process Act of 1994,” was introduced in Council and assigned Bill No. 10-666, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-376 and transmitted to both Houses of Congress for its review. D.C. Law 10-233 became effective on March 21, 1995.

**Legislative history of Law 11-36.** — Law 11-36, the “Insurance Omnibus Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the “Insurance Omnibus Amendment

Act of 1995,” was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

**Legislative history of Law 11-255.** — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Application of Law 10-36.** — Section 7 of D.C. Law 10-36 provided that §§ 35-3301 through 35-3303 and Section 5 of this act shall apply to all cession after the effective date of this act under reinsurance agreements which have had an inception, anniversary, or renewal date not less than 6 months after the effective date of this act.

**Mayor authorized to issue rules.** — Section 5 of D.C. Law 10-36 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-36, the Law on Credit for Reinsurance Act of 1993.** — See Mayor’s Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3302. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.

A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 35-3301 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer, and such a reduction shall be in the amount of funds held by or on



behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) Irrevocable, unconditional letters of credit issued or confirmed by a qualified United States institution no later than December 31st in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of insurer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuers acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first; or

(4) Any other investment which the Commissioner concludes is sufficiently secure and liquid to provide adequate security. (Oct. 15, 1993, D.C. Law 10-36, § 3, 40 DCR 5812; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(cc), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent" in (4).

**Legislative history of Law 10-36.** — See note to § 35-3301.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-3301.

**Application of Law 10-36.** — See note to § 35-3301.

## § 35-3303. Qualified United States financial institutions.

(a) For purposes of this chapter, the term "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state;

(2) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions issuing letters.

(b) For the purposes of this chapter, the term "qualified United States financial institution" means, for purposes of those provisions of this chapter

specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(1) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state and has been granted authority to operate with fiduciary powers; and

(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies. (Oct. 15, 1993, D.C. Law 10-36, § 4, 40 DCR 5812; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(cc), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-3301 and 35-4703.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (a)(3).

**Legislative history of Law 10-36.** — See note to § 35-3301.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-3301.

**Application of Law 10-36.** — See note to § 35-3301.

CHAPTER 34. REQUIRED ANNUAL FINANCIAL STATEMENTS AND  
PARTICIPATION IN THE NAIC INSURANCE REGULATORY  
INFORMATION SYSTEM.

Sec.

35-3401. Filing requirements.

35-3402. Immunity.

Sec.

35-3403. Confidentiality.

35-3404. Revocation of Certificate of Authority.

§ 35-3401. Filing requirements.

(a) Every company or association authorized to transact insurance business in the District shall file annually with the Mayor, before March 1st of each year, a financial statement for the year ending December 31st immediately preceding on forms furnished by the Mayor. The Mayor may extend the time for filing the statement by any company for reasons which the Mayor shall deem sufficient. Such a statement shall be verified by the oath of the president and secretary of the company, or, in their absence, by 2 other principal officers. The Mayor shall annually, in the month of December, furnish to each of the companies and associations authorized to do insurance business in the District forms necessary for filing the annual financial statement required by this section. The forms shall conform substantially to the form of statement adopted by the National Association of Insurance Commissioners ("NAIC"). The filing of these statements shall be in accordance with the NAIC Accounting Practices and Procedures Manual. The Mayor shall have power to make modifications and additions in the financial statement forms as the Mayor may deem necessary to ascertain the condition and affairs of the company. The Mayor may also require that at least once in the month of March in each year a summary of the annual statement by the company be published in a daily newspaper in the District.

(b) Each domestic, foreign, and alien insurer authorized to transact insurance in the District shall annually, on or before March 1st of each year, file with the NAIC, and pay the fee established by the NAIC for filing, reviewing, or processing the information, a copy of its annual statement convention form, along with any additional filings prescribed by the Mayor for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the Mayor and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the Mayor shall also be filed with the NAIC.

(c) Foreign insurers domiciled in a state which has a law substantially similar to subsection (a) of this section shall be deemed in compliance with this section if they file their annual statements in compliance with that jurisdiction's law. (Oct. 21, 1993, D.C. Law 10-42, § 2, 40 DCR 6020.)

**Section references.** — This section is referred to in §§ 35-4710, 35-4713, and 35-4714.

**Legislative history of Law 10-42.** — Law 10-42, the "Required Annual Financial Statements and Participation in the NAIC Insurance

Regulatory Information System Act of 1993," was introduced in Council and assigned Bill No. 10-129, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings



on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-77 and transmitted to both Houses of Congress for its review. D.C. Law 10-42 became effective on October 21, 1993.

**Mayor authorized to issue rules.** — Section 6 of D.C. Law 10-42 provided that the Mayor shall, pursuant to subchapter I of Chap-

ter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-42, the Required Annual Financial Statements and Participation in the NAIC Insurance Regulatory Information System Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3402. Immunity.

(a) In the absence of fraud, actual malice, or bad faith, members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others, including District employees, charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the Mayor under the authority of this chapter, and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required by this chapter.

(b) Nothing in this section is intended to abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person prior to this chapter. (Oct. 21, 1993, D.C. Law 10-42, § 3, 40 DCR 6020.)

**Legislative history of Law 10-42.** — See note to § 35-3401.

## § 35-3403. Confidentiality.

All financial analysis ratios and examination synopses and related information concerning insurance companies that are submitted to the Mayor by the NAIC Insurance Regulatory Information System are confidential and may not be disclosed by the Mayor or any member of the Department of Insurance and Securities Regulation. This information shall not be subject to disclosure under the District of Columbia Freedom of Information Act or any other District law relating to disclosure of information. (October 21, 1993, D.C. Law 10-42, § 4, 40 DCR 6020; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(dd), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Department of Insurance and Securities Regulation" for "Insurance Administration" in the first sentence.

**Legislative history of Law 10-42.** — See note to § 35-3401.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and

Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11- (Act 11-524) is projected to become law on May 22, 1997.

**References in text.** — The "District of Columbia Freedom of Information Act," referred to in this section, is D.C. Law 1-96, codified at § 1-1521 et seq.

**§ 35-3404. Revocation of Certificate of Authority.**

The Mayor may fine insurance companies or suspend, revoke, or refuse to renew the Certificate of Authority of any insurer failing to file its annual statement when due or within any extension of time which the Mayor, for good cause, may have granted. (Oct. 21, 1993, D.C. Law 10-42, § 5, 40 DCR 6020.)

**Legislative history of Law 10-42.** — See note to § 35-3401.

CHAPTER 35. STANDARDS TO IDENTIFY INSURANCE COMPANIES  
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION.

Sec.

35-3501. Standards for determining insurance companies in hazardous financial condition.

Sec.

35-3502. Corrective actions.  
35-3503. Judicial review.

**§ 35-3501. Standards for determining insurance companies in hazardous financial condition.**

(a) In order to determine whether the continued operation of any insurer transacting an insurance business in the District of Columbia might be deemed to be hazardous to the policyholders, creditors, or the general public, the Mayor may consider the following standards, either singly or in combination of 2 or more:

(1) Adverse findings reported in financial condition and market conduct examination reports;

(2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(4) The insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

(5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(6) The insurer's operating loss in the last 12-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;

(8) Contingent liabilities, pledges, or guaranties which, either individually or collectively, involve a total amount which in the opinion of the Mayor may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such an insurer;

(10) The age and collectibility of receivables;

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such a position;



(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) Whether management of an insurer either has filed any false or misleading sworn financial statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

(15) Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

(b) For the purposes of making a determination of an insurer's financial condition under this chapter, the Mayor may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period. (Oct. 21, 1993, D.C. Law 10-43, § 2, 40 DCR 6023.)

**Legislative history of Law 10-43.** — Law 10-43, the "Standards to Identify Insurance Companies Deemed to Be in Hazardous Financial Condition Act of 1993," was introduced in Council and assigned Bill No. 10-130, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-78 and transmitted to both Houses of Congress for its review. D.C. Law 10-43 became effective on October 21, 1993.

**Mayor authorized to issue rules.** — Section 5 of D.C. Law 10-43 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-43, the Standards to Identify Insurance Companies Deemed to Be in Hazardous Financial Condition Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3502. Corrective actions.

(a) If the Mayor determines that the continued operation of the insurer licensed to transact business in the District of Columbia may be hazardous to the policyholders or the general public, the Mayor may, upon his or her determination, issue an order requiring the insurer to:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend, or limit the volume of business being accepted or renewed;

(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) File reports in a form acceptable to the Mayor concerning the market value of an insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Mayor deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured; or

(9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on a form promulgated by the Mayor.

(b) If the insurer is a foreign insurer, the Mayor's order under subsection (a) of this section may be limited to the extent provided by statute.

(c) Any insurer subject to an order under subsection (a) of this section may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to § 1-1509. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the Mayor based the order. Unless mutually agreed between the Mayor and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be held in the District of Columbia. The Mayor shall hold all hearings under this section privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

(d) The procedures and remedies set forth in this chapter do not in any way supercede or limit the authority of the Commissioner of Insurance and Securities to take over a company or to revoke or suspend its certificate of authority pursuant to Chapter 4 of this title, or Chapter 15 of this title. (Oct. 21, 1993, D.C. Law 10-43, § 3, 40 DCR 6023; Mar. 17, 1994, D.C. Law 10-76, § 7(a), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 7(a), 41 DCR 1005; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(ee), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner of Insurance and Securities" for "Superintendent of Insurance" in (d).

**Legislative history of Law 10-43.** — See note to § 35-3501.

**Legislative history of Law 10-76.** — Law 10-76, the "Insurance Omnibus Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the "Insurance Omnibus Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was

referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was as-

signed Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

### § 35-3503. Judicial review.

Any order or decision of the Mayor shall be subject to review in accordance with § 1-1510, at the request of any person suffering a legal wrong or whose interests are adversely affected or aggrieved by the order or decision of the Mayor. (Oct. 21, 1993, D.C. Law 10-43, § 4, 40 DCR 6023.)

**Legislative history of Law 10-43.** — See note to § 35-3501.



## CHAPTER 36. LAW ON EXAMINATIONS.

Sec.

35-3601. Definitions.

35-3602. Authority, scope, and scheduling of examinations.

35-3603. Conduct of examinations.

Sec.

35-3604. Examination reports.

35-3605. Conflict of interest.

35-3606. Cost of examinations.

35-3607. Immunity from liability.

## § 35-3601. Definitions.

For the purposes of this chapter, the term:

(1) Repealed.

(2) "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the insurance laws of the District of Columbia, including fraternal benefit associations and excluding the District of Columbia Life and Health Guaranty Association and the District of Columbia Property and Liability Insurance Guaranty Association.

(2A) "Department" means the Department of Insurance and Securities Regulation.

(3) "District" means the District of Columbia.

(4) "Examiner" means any individual or firm having been authorized by the Mayor to conduct an examination under this chapter.

(5) "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation, or any affiliate thereof. (Oct. 21, 1993, D.C. Law 10-49, § 2, 40 DCR 6110; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(ff)(1), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) repealed (1); and inserted (1A) (now (2A)).

**Legislative history of Law 10-49.** — Law 10-49, the "Law on Examinations Act of 1993," was introduced in Council and assigned Bill No. 10-131, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-94 and transmitted to both Houses of Congress for its review. D.C. Law 10-49 became effective on October 21, 1993.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Coun-

cil and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Mayor authorized to issue rules.** — Section 10 of D.C. Law 10-49 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-49, the Law on Examinations Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3602. Authority, scope, and scheduling of examinations.

(a) The Mayor, or any of his or her examiners, may conduct an examination under this chapter of any company as often as the Mayor in his or her sole

discretion deems appropriate, but shall at a minimum conduct an examination of every insurer licensed in the District at least once every 5 years. In scheduling and determining the nature, scope, and frequency of the examinations, the Mayor shall consider such factors as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the Mayor exercises discretion under this section.

(b) For purposes of completing an examination of any company under this chapter, the Mayor may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the Mayor, necessary or material to the examination of the company.

(c) In lieu of an examination under this chapter of any foreign or alien insurer licensed in the District, the Mayor may accept, until January 1, 1994, an examination report on the company prepared by the insurance department for the company's state of domicile or port-of-entry state. Thereafter, these reports may be accepted only if the insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program, or the examination is performed under the supervision of an accredited state insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department, and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department. (Oct. 21, 1993, D.C. Law 10-49, § 3, 40 DCR 6110.)

**Legislative history of Law 10-49.** — See note to § 35-3601.

### **§ 35-3603. Conduct of examinations.**

(a) Upon determining that an examination should be conducted, the Mayor shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The Mayor may also employ any other guidelines or procedures the Mayor deems appropriate.

(b) Every company or person from whom information is sought, or its officers, directors, and agents, must provide to the examiners appointed under subsection (a) of this section, at all reasonable hours at its offices, convenient and free access to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person must facilitate the examination and aid in the

examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the insurance laws of the District. Any proceedings for suspension, revocation, or nonrenewal of any license or authority shall be conducted pursuant to §§ 35-405 and 35-1506.

(c) The Mayor, or any of his or her examiners, may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Mayor may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(d) When making an examination under this chapter, the Mayor may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

(e) Nothing contained in this chapter shall be construed to limit the Mayor's authority to terminate, suspend, or complete any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of the District. Findings of fact and conclusions of law made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this chapter shall be construed to limit the Mayor's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Mayor may, in his or her sole discretion, deem appropriate.

(g)(1) Any insurer, agent, or broker may cause its accounts, records, documents, and files described in subsection (b) of this section to be created, recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk, electronic imaging, electronic data processing, electronically transmitted facsimile, printout, or reproduction of electronically stored data or other process which accurately reproduces or forms a durable medium for the reproduction of an account, record, document, or file.

(2) If the items so stored are not the original but accurately represent the original, the original may be destroyed unless held in a custodial or fiduciary capacity, but only if the data is easily accessible to the department in readable form and readable reproduced copies are obtainable.

(3) A record so stored and accurately reproduced is admissible in evidence as the original in any judicial or administrative proceeding whether the original is in existence or not. The introduction of a reproduced record does not preclude admission of the original. This shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under



the rules of evidence. (Oct. 21, 1993, D.C. Law 10-49, § 4, 40 DCR 6110; March 17, 1994, D.C. Law 10-76, § 10, 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 10, 41 DCR 1005; Apr. 9, 1997, D.C. Law 11-225, § 2, 44 DCR 122.)

**Effect of amendments.** — D.C. Law 11-225 added (g).

**Legislative history of Law 10-49.** — See note to § 35-3601.

**Legislative history of Law 10-76.** — Law 10-76, the “Insurance Omnibus Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the “Insurance Omnibus Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory

Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Legislative history of Law 11-225.** — Law 11-225, the “Insurers’ Records Access and Control Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-605, which was referred to the Committee Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on November 27, 1996, it was assigned Act No. 11-452 and transmitted to both Houses of Congress for its review. D.C. Law 11-225 became effective on April 9, 1997.

## § 35-3604. Examination reports.

(a) *General description.* — All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and those conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) *Filing of examination report.* — No later than 60 days following completion of the examination, the examiner in charge shall file with the Mayor a verified written report of examination under oath. Upon receipt of the verified report, the Mayor shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) *Adoption of report on examination.* — Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the Mayor shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner’s workpapers and enter an order:

(1) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the Mayor, the Mayor may order the company to take any action the Mayor considers necessary and appropriate to cure the violation;

(2) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documen-

tation, or information, and refiling pursuant to subsections (a) and (b) of this section; or

(3) Calling for an investigatory hearing with no less than 20 days notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(d) *Orders and procedures.* — (1) All orders entered pursuant to subsection (c)(1) of this section shall be accompanied by findings of fact and conclusions of law resulting from the Mayor's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. These orders shall be considered final administrative decisions and may be appealed to the Mayor pursuant to §§ 35-432 and 35-1547, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) Any hearing conducted under subsection (c)(3) of this section by the Mayor shall be conducted as a nonadversarial confidential investigatory proceeding necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the Mayor's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of such a hearing, the Mayor shall enter an order pursuant to subsection (c)(1) of this section.

(A) The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The Mayor may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the Department, the company, or other persons. The documents produced shall be included in the record, and testimony taken by the Mayor shall be under oath and preserved for the record. Nothing contained in this section shall require the Department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(B) The hearing shall proceed with the Mayor posing questions to the persons subpoenaed. Thereafter the company and the Department may present testimony relevant to the investigation. Cross examination shall be conducted only by the Mayor. The company and the Department shall be permitted to make closing statements and may be represented by counsel of their choice.

(e) *Publication and use.* — (1) Upon the adoption of the examination report under subsection (c)(1) of this section, the Mayor shall continue to hold the content of the examination report as private and confidential information for a period of 10 days, except to the extent provided in subsection (b) of this section. Thereafter, the Mayor may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(2) No District law shall prevent or be construed as prohibiting the Mayor from disclosing the content of an examination report, preliminary examination

report, or results, or any related matter, to the Department or the department of insurance of any other state or country, or to law enforcement officials of the District or any other state or any agency of the federal government at any time, so long as the agency or office receiving the report or related matters agrees in writing to hold it confidential in a manner consistent with this chapter.

(3) In the event the Mayor determines that regulatory action is appropriate as a result of any examination, the Mayor may initiate any proceedings or actions as provided by the laws of the District.

(f) *Confidentiality of ancillary information.* — All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the Mayor or any other person in the course of an examination made under this chapter must be given confidential treatment, are not subject to subpoena, and may not be made public by the Mayor or any other person, except to the extent provided in subsection (e) of this section. Access may also be granted to the National Association of Insurance Commissioners. Parties must agree in writing prior to receiving the information to provide it the same confidential treatment required by this section, unless the prior written consent of the company to which it pertains has been obtained. (Oct. 21, 1993, D.C. Law 10-49, § 5, 40 DCR 6110; Sept. 8, 1995, D.C. Law 11-36, § 7, 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 7, 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(ff)(2), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11-90 deleted the former first sentence in (d)(2)(A).

D.C. Law 11- (Act 11-524) substituted “Department” for “Administration” twice in (d)(2)(A) and (B) and once in (e)(2).

**Temporary amendment of section.** — D.C. Law 11-36 deleted the former first sentence in (d)(2)(A).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 8 of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 7 of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-49.** — See note to § 35-3601.

**Legislative history of Law 11-36.** — Law 11-36, the “Insurance Omnibus Temporary

Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the “Insurance Omnibus Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-3601.

## § 35-3605. Conflict of interest.

(a) No examiner may be appointed by the Mayor if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to



examination under this chapter. This section shall not be construed to automatically preclude an examiner from being:

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of this section, the Mayor may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter. (Oct. 21, 1993, D.C. Law 10-49, § 6, 40 DCR 6110.)

**Legislative history of Law 10-49.** — See note to § 35-3601.

## § 35-3606. Cost of examinations.

All expenses of the examinations shall be paid by the company examined, and the company shall timely pay the Mayor the actual expense of such an examination upon receipt of itemized bills provided by the Mayor. (Oct. 21, 1993, D.C. Law 10-49, § 7, 40 DCR 6110.)

**Legislative history of Law 10-49.** — See note to § 35-3601.

## § 35-3607. Immunity from liability.

(a) No cause of action shall arise nor shall any liability be imposed against the Mayor, the Mayor's authorized representatives, or an examiner appointed by the Mayor for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(b) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Mayor or the Mayor's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a) of this section.

(d) A person identified in subsection (a) of this section shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing

the action was not substantially justified in doing so. For purposes of this section, the term “substantially justified” means a proceeding that had a reasonable basis in law or fact at the time that it was initiated. (Oct. 21, 1993, D.C. Law 10-49, § 8, 40 DCR 6110.)

**Legislative history of Law 10-49.** — See note to § 35-3601.

## CHAPTER 37. HOLDING COMPANIES.

*Subchapter I. Holding Company System.*

Sec.

- 35-3701. Definitions.
- 35-3702. Subsidiaries of insurers.
- 35-3703. Acquisition of control of or merger with domestic insurer.
- 35-3704. Acquisitions involving insurers not otherwise covered.
- 35-3705. Registration of insurers.
- 35-3706. Standards and management of an insurer within a holding company system.
- 35-3707. Examination.
- 35-3708. Confidential treatment.
- 35-3709. Injunctions, prohibitions against voting securities, sequestration of voting securities.
- 35-3710. Sanctions.
- 35-3711. Receivership.

Sec.

- 35-3712. Recovery.
- 35-3713. Revocation, suspension, or nonrenewal of insurer's license.
- 35-3714. Judicial review; mandamus.

*Subchapter II. Mutual Holding Companies.*

- 35-3721. Formation of a mutual holding company.
- 35-3722. Merger of policyholder membership interests.
- 35-3723. Incorporation of holding company.
- 35-3724. Insurers rehabilitation and liquidation.
- 35-3725. Applicability; membership interest; powers.
- 35-3726. Failure to give notice.
- 35-3727. Limitations of actions.
- 35-3728. Rulemaking.

*Subchapter I. Holding Company System.*

**Editor's notes.** — Because of the enactment of subchapter II of this chapter by D.C. Law 11-159, the preexisting text of chapter 37,

which includes §§ 35-3701 through 35-3714, has been designated as subchapter I of this chapter.

## § 35-3701. Definitions.

For the purposes of this subchapter, the term:

(1) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(1A) "Commissioner" means the Commissioner of Insurance and Securities.

(2) "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by § 35-3705(k) that control does not exist in fact. The Mayor may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such a determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "District" means the District of Columbia.

(4) "Insurance holding company system" means an arrangement which consists of 2 or more affiliated persons, one or more of whom is an insurer.



(5) "Insurer" includes any company defined by §§ 35-302 and 35-1503, authorized to do the business of insurance in the District, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District, or a state or political subdivision of a state.

(6) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(7) "Securityholder" means an individual who owns any security of a specified person, including common stock, preferred stock debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(8) "Subsidiary" means an affiliate controlled by a specified person directly or indirectly through 1 or more intermediaries.

(9) Repealed.

(10) "Voting security" means any security convertible into or evidencing a right to acquire a voting security. (Oct. 21, 1993, D.C. Law 10-44, § 2, 40 DCR 6027; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(gg)(1), 44 DCR 1730.)

**Section references.** — This section is referred to in §§ 35-3704, 35-4001, and 35-4710.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) inserted (1A); and repealed (9).

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Legislative history of Law 10-44.** — Law 10-44, the "Holding Company System Act of 1993," was introduced in Council and assigned Bill No. 10-132, which was referred to the Committee on Consumer and Regulatory Af-

fairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 5, 1993, it was assigned Act No. 10-79 and transmitted to both Houses of Congress for its review. D.C. Law 10-44 became effective on October 21, 1993.

**Editor's notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language.

**Mayor authorized to issue rules.** — Section 10 of D.C. Law 10-44 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter (now subchapter).

**Delegation of Authority Pursuant to D.C. Law 10-44, the Holding Company System Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3702. Subsidiaries of insurers.

(a) Any domestic insurer, either by itself or in cooperation with 1 or more persons, may organize or acquire 1 or more subsidiaries. The subsidiaries may conduct any kind of business and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under the insurance laws of the District, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of 1 or more subsidiaries, amounts which do not exceed the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders; provided that after these investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of these investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(A) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of 1 or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (1) of this subsection or in §§ 35-634 and 35-639, or in § 35-1521, applicable to the insurer. For the purposes of this paragraph, the term "the total investment of the insurer" shall include:

(A) Any direct investment by the insurer in an asset; and

(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such a subsidiary; or

(3) With the approval of the Mayor, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of 1 or more subsidiaries; provided, that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (b) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the insurance laws of the District applicable to the investments of insurers.

(d) Whether any investment pursuant to subsection (b) of this section meets the applicable requirements is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal

balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within any further time the Mayor may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of the insurance laws of the District, and the insurer has notified the Mayor. (Oct. 21, 1993, D.C. Law 10-44, § 3, 40 DCR 6027.)

**Legislative history of Law 10-44.** — See note to § 35-3701.

### **§ 35-3703. Acquisition of control of or merger with domestic insurer.**

(a)(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after consummation, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer.

(2) No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the Mayor and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the Mayor in the manner prescribed by this subchapter.

(b)(1) For purposes of this section, the term “domestic insurer” shall include any person controlling a domestic insurer unless the person, as determined by the Mayor, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such a person shall file a preacquisition notification with the Mayor containing the information set forth in § 35-3704(c) 30 days prior to the proposed effective date of the acquisition. Failure to file is subject to § 35-3704(e).

(2) For the purposes of this section, the term “person” shall not include any securities broker holding, in the usual and customary brokers function, less than 20% of the voting securities of an insurance company or of any person who controls an insurance company.

(c) The statement to be filed with the Mayor shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the



merger or other acquisition of control referred to in subsections (a) and (b) of this section is to be effected (hereinafter called "acquiring party"):

(A) If the person is an individual, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes, other than minor traffic violations, during the past 10 years; or

(B) If the person is not an individual, a report of the nature of its business operations during the past 5 years or for any lesser period the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these positions. The list shall include for each individual the information required by subparagraph (A) of this paragraph;

(2) The source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for this purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing the consideration; provided, however, that where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each acquiring party (or for any lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to in subsections (a) and (b) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsections (a) and (b) of this section, and a statement as to the method by which the fairness of the proposal was determined;

(6) The amount of each class of any security referred to in subsections (a) and (b) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsections (a) and (b) of this section in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom any contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any security referred to in subsections (a) and (b) of this section during the 12 calendar months preceding the filing of

the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;

(9) A description of any recommendations to purchase any security referred to in subsections (a) and (b) of this section made during the 12 calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsections (a) and (b) of this section, and, if distributed, all additional related soliciting material;

(11) The terms of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsections (a) and (b) of this section for tender, and the amount of any resulting fees, commissions, or other compensation to be paid to broker-dealers; and

(12) Any additional information as the Mayor may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(d) If the person required to file the statement referred to in subsections (a) and (b) of this section is a partnership, limited partnership, syndicate or other group, the Mayor may require that the information called for by subsection (c)(1) through (12) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsections (a) and (b) of this section is a corporation, the Mayor may require that the information called for by subsection (c)(1) through (12) of this section shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(e) If any material change occurs in the facts set forth in the statement filed with the Mayor and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the Mayor and sent to the insurer within 2 business days after the person learns of the change.

(f) If any offer, request, invitation, agreement, or acquisition referred to in subsections (a) and (b) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 (15 U.S.C. § 77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsections (a) and (b) of this section may utilize the documents in furnishing the information called for by that statement.

(g)(1) The Mayor shall approve any merger or other acquisition of control referred to in subsections (a) and (b) of this section unless, after a public hearing, the Mayor finds that:

(A) After the change of control, the domestic insurer referred to in subsections (a) and (b) of this section would not be able to satisfy the

requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in the District or tend to create a monopoly. In applying the competitive standard in this paragraph:

(i) The informational requirements of § 35-3704(c)(1) and the standards of § 35-3704(d)(2) shall apply;

(ii) The merger or other acquisition shall not be disapproved if the Mayor finds that any of the situations meeting the criteria provided by § 35-3704(d)(3) exist; and

(iii) The Mayor may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(D) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(E) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) The public hearing referred to in paragraph (1) of this subsection shall be held within 30 days after the statement required by subsections (a) and (b) of this section is filed, and at least 20-days notice shall be given by the Mayor to the person filing the statement. Not less than 7-days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons designated by the Mayor. The Mayor shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of the District of Columbia. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of the public hearing.

(3) The Mayor may retain, at the acquiring person's expense, any attorneys, actuaries, accountants, and other experts not otherwise a part of the Mayor's staff as may be reasonably necessary to assist the Mayor in reviewing the proposed acquisition of control.

(h) The provisions of this section shall not apply to:

(1) Any transaction which is subject to the laws of the District dealing with the merger or consolidation of 2 or more insurers; or



(2) Any offer, request, invitation, agreement, or acquisition which the Mayor by order shall exempt as:

(A) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(B) Otherwise not comprehended within the purposes of this section.

(i) The following shall be violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a), (b), or (c) of this section; and

(2) The effectuation, or any attempt to effectuate, an acquisition of control of, or merger with, a domestic insurer unless the Mayor has given approval.

(j) Every person not resident, domiciled, or authorized to do business in the District who files a statement with the Mayor under this section shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Mayor to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the Mayor and transmitted by registered or certified mail by the Mayor to the person at his or her last known address. (Oct. 21, 1993, D.C. Law 10-44, § 4, 40 DCR 6027.)

**Section references.** — This section is referred to in §§ 35-3704 and 35-3709.

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Editor's notes.** — Because of the codifica-

tion of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, "subchapter" has been substituted for "chapter" in (a)(2).

## § 35-3704. Acquisitions involving insurers not otherwise covered.

(a) For the purposes of this section, the term:

(1) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring, directly or indirectly, the control of another person, and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(2) "Involved insurer" means an insurer that either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(b)(1) Except as provided in paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in the District.

(2) This section shall not apply to the following:

(A) An acquisition subject to approval or disapproval by the Mayor pursuant to § 35-3703;

(B) A purchase of securities solely for investment purposes as long as the securities are not used by voting or otherwise to cause, or attempt to cause, the substantial lessening of competition in any insurance market in the District. If a purchase of securities results in a presumption of control as defined in § 35-3701(2), it is not solely for investment purposes unless the Commissioner of Insurance or other appropriate official of the insurer's state of

domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary Commissioner to the Mayor;

(C) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the Mayor in accordance with subsection (c)(1) of this section 30 days prior to the proposed effective date of the acquisition. This preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of paragraph (2) of this subsection;

(D) The acquisition of already affiliated persons;

(E)(i) An acquisition if, as an immediate result of the acquisition:

(I) In no market would the combined market share of the involved insurers exceed 5% of the total market;

(II) There would be no increase in any market share; or

(III) In no market would the combined market share of the involved insurers exceed 12% of the total market, and the market share increases by more than 2% of the total market.

(ii) For the purposes of this subparagraph, the term "market" means direct written insurance premium in the District for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in the District;

(F) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and

(G) An acquisition of an insurer whose domiciliary state insurance commissioner or other appropriate official affirmatively finds that the insurer is in failing condition, there is a lack of a feasible alternative to improving the condition, the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and these findings are communicated by the domiciliary state insurance commissioner or other appropriate official to the Mayor.

(c)(1) An acquisition covered by subsection (b) of this section may be subject to an order pursuant to subsection (e) of this section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The Mayor shall give confidential treatment to information submitted under this subsection in the same manner as provided in § 35-3708.

(2) The preacquisition notification shall be in the form and contain the information prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (b)(2)(E) of this section, cause the acquisition not to be exempted from the provisions of this section. The Mayor may require any additional material and information the Mayor deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in the District accompanied by a

summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(3) The waiting period required shall begin on the date of receipt by the Mayor of a preacquisition notification and shall end on the earlier of the 30th day after the date of the receipt or termination of the waiting period by the Mayor. Prior to the end of the waiting period, the Mayor, on a one-time basis, may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of the additional information by the Mayor or termination of the waiting period by the Mayor.

(d)(1) The Mayor may enter an order under subsection (e)(1) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to lessen substantially competition in any line of insurance in the District, or tend to create a monopoly therein, or if the insurer fails to file adequate information in compliance with subsection (c) of this section.

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1) of this subsection, the Mayor shall consider the following:

(A) Any acquisition covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standards if the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more.

A highly concentrated market is one in which the share of the 4 largest insurers is 75% or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than 2 insurers are involved, exceeding the total of the 2 columns in the table is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection. For the purposes of this subparagraph, the insurer with the largest share of the market shall be deemed to be Insurer A.

(B) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the 2 largest to the 8 largest, has increased by 7% or more of the market over a period of time extending from any base year 5 to 10 years prior



to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) of this section involving 2 or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is 2% or more.

(C) For the purposes of this paragraph, the term:

(i) "Insurer" includes any company or group of companies under common management, ownership, or control.

(ii) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Mayor shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in the District, and the relevant geographical market is assumed to be the District.

(D) The burden of showing prima facie evidence of violation of the competitive standard rests upon the Mayor.

(E) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, the Mayor may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs (A) and (B) of this paragraph, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e)(1) through (4) of this section if:

(A) The acquisition will yield substantial economies of scale or economies in resource utilization that feasibly cannot be achieved in any other way, and the public benefits which would arise from these economies exceed the public benefits which would arise from not lessening competition; or

(B) The acquisition will substantially increase the availability of insurance, and the public benefits of this increase exceed the public benefits which would arise from not lessening competition.

(e)(1) If an acquisition violates the standards of this section, the Mayor may enter an order:

(A) Requiring an involved insurer to cease and desist from doing business in the District with respect to the line or lines of insurance involved in the violation; or

(B) Denying the application of an acquired or acquiring insurer for a license to do business in the District.

(2) An order under this subsection shall not be entered unless:

(A) There is a hearing;

(B) Notice of the hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

(C) The hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the Mayor setting forth findings of fact and conclusions of law.

(3) An order entered under this subsection shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such a plan or other information, the Mayor shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(4) An order pursuant to this subsection shall not apply if the acquisition is not consummated.

(5) Any person who violates a cease and desist order of the Mayor under paragraph (1) of this subsection while such an order is in effect may, after notice and hearing and upon order of the Mayor, be subject, at the discretion of the Mayor, to any one or more of the following:

(A) A monetary administrative penalty of not more than \$10,000 for every day of violation; or

(B) Suspension or revocation of the person's license.

(6) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to an administrative fine of not more than \$50,000.

(f) Sections 35-3709(b) and (c) and 35-3711 do not apply to acquisitions covered under subsection (b) of this section. (Oct. 21, 1993, D.C. Law 10-44, § 5, 40 DCR 6027; May 16, 1995, D.C. Law 10-255, § 32(a), 41 DCR 5193; Apr. 18, 1996, D.C. Law 11-110, § 42, 43 DCR 530.)

**Section references.** — This section is referred to in § 35-3703.

**Effect of amendments.** — D.C. Law 10-255 validated previously made changes in (b)(2)(B) and (b)(2)(E)(iii).

D.C. Law 11-110 validated previously made subdivision designation changes in (b)(2)(E).

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Legislative history of Law 10-255.** — Law

10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendment Acts of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5,

1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

## § 35-3705. Registration of insurers.

(a)(1) Every insurer which is authorized to do business in the District and which is a member of an insurance holding company system shall register with the Mayor, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in the following provisions of this subchapter:

(A) This section;

(B) Section 35-3706(a)(1), (b), and (d); and

(C) Either § 35-3706(a)(2) or a provision like the following: “Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition.”

(2) Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by April 30 of each year, unless the Mayor for good cause shown extends the time for registration, and then within the extended time. The Mayor may require any insurer authorized to do business in the District which is a member of a holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (c) of this section or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement on a form prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(A) Loans, other investments, or purchases, sales, or exchange of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales, or exchange of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer’s assets to liability, other than insurance contracts entered into in the ordinary course of the insurer’s business;



(E) All management agreements, service contracts, and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Mayor.

(c) All registration statements shall contain a summary outlining all items in the current registration statement which are different from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if the information is not material for the purposes of this section. Unless the Mayor by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of 1% or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(e) Subject to § 35-3706(b), each registered insurer shall report to the Mayor all dividends and other distributions to shareholders within 15 business days following their declaration.

(f) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this subchapter.

(g) The Mayor shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(h) The Mayor may require or allow 2 or more affiliated insurers subject to registration to file a consolidated registration statement.

(i) The Mayor may allow an insurer which is authorized to do business in the District and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the Mayor by rule, regulation, or order shall exempt the same from the provisions of this section.

(k) Any person may file with the Mayor a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register

or report under this section which may arise out of the insurer's relationship with the person unless and until the Mayor disallows such a disclaimer. The Mayor shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(1) The failure to file a registration statement or any summary of the registration statement required by this section within the time specified for such a filing shall be a violation of this section. (Oct. 21, 1993, D.C. Law 10-44, § 6, 40 DCR 6027; May 16, 1995, D.C. Law 10-255, § 32(b), 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-255, § 43, 44 DCR 1271.)

**Section references.** — This section is referred to in §§ 35-3701, 35-3707, 35-3708, and 35-3710.

**Effect of amendments.** — D.C. Law 10-255 validated previously made changes in (a)(1)(A) and (a)(2).

D.C. Law 11-255 validated a previously made punctuation correction in (a)(1)(C).

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Legislative history of Law 10-255.** — See note to § 35-3704.

**Legislative history of Law 11-255.** — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and as-

signed Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

**Editor's notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language of (a)(1) and in (f).

## § 35-3706. Standards and management of an insurer within a holding company system.

(a)(1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) Charges or fees for services performed shall be reasonable;

(C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(D) The books, accounts, and records of each party to all the transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including any accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

(E) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Mayor in writing of its intention to enter into such a transaction at least 30 days prior thereto, or any shorter period as the Mayor may permit, and the Mayor has not disapproved it within such a period:

(A) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of 3% of the insurer's

admitted assets or 25% of surplus as regards policyholders as of December 31st next preceding; or

(ii) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st next preceding;

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders as of December 31st next preceding; or

(ii) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st next preceding;

(C) Reinsurance agreements or modifications in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to 1 or more affiliates of the insurer;

(D) All management agreements, service contracts, and all cost-sharing arrangements; and

(E) Any material transactions, specified by regulation, which the Mayor determines may adversely affect the interests of the insurer's policyholders.

(3) Nothing contained in paragraph (2) of this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(4) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Mayor determines that any separate transactions were entered into over any 12-month period for that purpose, the Mayor may exercise authority provided under § 35-3710.

(5) The Mayor, in reviewing transactions pursuant to subsection (a)(2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (a)(1) of this section and whether they may adversely affect the interests of policyholders.

(6) The Mayor shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds 10% of such corporation's voting securities.



(b)(1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty days after the Mayor has received notice of the declaration and has not within this period disapproved the payment; or

(B) The Mayor shall have approved the payment within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the lesser of 10% of the insurer's surplus as regards policyholders as of the 31st day of December next preceding, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous 2 calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Mayor's approval, and such a declaration shall confer no rights upon shareholders until the Mayor has approved the payment of such a dividend or distribution, or the Mayor has not disapproved the payment within the 30-day period referred to above.

(c)(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this subchapter.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with 1 or more other persons under arrangements meeting the standards of subsection (a)(1) of this section.

(3) Not less than  $\frac{1}{3}$  of the directors of a domestic insurer and not less than  $\frac{1}{3}$  of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or such an entity. At least 1 such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee.

(4) The board of directors of a domestic insurer shall establish 1 or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer, and who are not beneficial owners of a controlling interest in

the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not apply to a domestic insurer if the person controlling the insurer is an insurer having a board of directors and committees that meet the requirements of paragraphs (3) and (4) of this subsection.

(d) For purposes of this subchapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The Mayor may treat such an investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such an investment so warrants. (Oct. 21, 1993, D.C. Law 10-44, § 7, 40 DCR 6027; March 17, 1994, D.C. Law 10-76, § 8, 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 8, 41 DCR 1005; Sept. 8, 1995, D.C. Law 11-36, §§ 8(a), 8(b), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, §§ 8(a), 8(b), 42 DCR 7155.)

**Section references.** — This section is referred to in §§ 35-3705, 35-3708, 35-3910, and 35-4718.

**Effect of amendments.** — D.C. Law 11-90 substituted “§ 35-3710” for “§ 35-3709” in (a)(4); and substituted “subsection (a)(1) of this section” for “§ 35-3704(a)(1)” in (c)(2).

**Temporary amendment of section.** — D.C. Law 11-36 substituted “§ 35-3710” for “§ 35-3709” in (a)(4); and substituted “subsec-

tion (a)(1) of this section” for “§ 35-3704(a)(1)” in (c)(2).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 9(a) and (b) of the Insurance Omnibus Emergency Amend-

ment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42 DCR 2544) and § 8(a) and (b) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Legislative history of Law 10-76.** — D.C. Law 10-76, the “Insurance Omnibus Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the “Insurance Omnibus Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

**Legislative history of Law 11-36.** — Law 11-36, the “Insurance Omnibus Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-181, which was retained by Council. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-69 and transmitted to both Houses of Congress for its review. D.C. Law 11-36 became effective on September 8, 1995.

**Legislative history of Law 11-90.** — Law 11-90, the “Insurance Omnibus Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-182, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-173 and transmitted to both Houses of Congress for its review. D.C. Law 11-90 became effective on February 27, 1996.

**Editor’s notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, “subchapter” has been substituted for “chapter” in (c)(1) and (d).

## § 35-3707. Examination.

(a) Subject to the limitations contained in this section and in addition to the powers which the Mayor has under the insurance laws of the District relating to the examination of insurers, the Mayor may order any insurer registered under § 35-3705 to produce records, books, or other information papers in the possession of the insurer or its affiliates reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this subchapter. In the event the insurer fails to comply with the order, the Mayor shall have the power to examine such affiliates to obtain the information.

(b) The Mayor may retain, at the registered insurer’s expense, those attorneys, actuaries, accountants and other experts not otherwise a part of the Mayor’s staff reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any person so retained shall be under the direction and control of the Mayor and shall act in a purely advisory capacity.

(c) Each registered insurer producing records, books and papers for examination pursuant to subsection (a) of this section shall be liable for and shall pay the expense of the examination in accordance with Chapter 36 of this title governing cost of examinations. (Oct. 21, 1993, D.C. Law 10-44, § 8, 40 DCR 6027.)

**Section references.** — This section is referred to in § 35-3708.

**Legislative history of Law 10-44.** — See note to § 35-3701.



**Editor's notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 37 as subchapter I, "subchapter" has been substituted for "chapter" in (a).

## § 35-3708. Confidential treatment.

All information, documents, and copies obtained by or disclosed to the Mayor or any other person in the course of an examination or investigation made pursuant to § 35-3707 and all information reported pursuant to §§ 35-3705 and 35-3706 shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the Mayor, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains, unless the Mayor, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the Mayor may publish all or any part in such a manner as he or she deems appropriate. (Oct. 21, 1993, D.C. Law 10-44, § 9, 40 DCR 6027.)

**Section references.** — This section is referred to in § 35-3704.

**Legislative history of Law 10-44.** — See note to § 35-3701.

## § 35-3709. Injunctions, prohibitions against voting securities, sequestration of voting securities.

(a) Whenever it appears to the Mayor that any insurer or any director, officer, employee, or agent has committed, or is about to commit, a violation of this subchapter or of any rule, regulation, or order issued by the Mayor, the Mayor may apply to the Superior Court of the District of Columbia for an order enjoining the insurer or the director, officer, employee, or agent from violating or continuing to violate this subchapter or any rule, regulation, or order, and for any other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(b)(1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired, or to be acquired, in contravention of the provisions of this subchapter, or of any rule, regulation, or order issued by the Mayor pursuant to this subchapter, may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at such a meeting shall be invalidated by the voting of these securities, unless the action would materially affect control of the insurer or unless the courts of the District of Columbia have so ordered.

(2) If an insurer or the Mayor has reason to believe that any security of the insurer has been, or is about to be, acquired in contravention of the provisions of this subchapter or of any rule, regulation, or order issued by the Mayor pursuant to this subchapter, the insurer or the Mayor may apply to the Superior Court of the District of Columbia to enjoin any offer, request,

invitation, agreement, or acquisition made in contravention of § 35-3703 or any rule, regulation, or order issued by the Commissioner to enjoin the voting of any security so acquired, to void any vote of such a security already cast at any meeting of shareholders, and for any other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) In any case where a person has acquired, or is proposing to acquire, any voting securities in violation of this subchapter or any rule, regulation, or order issued by the Mayor pursuant to this subchapter, the Superior Court of the District of Columbia may, on that notice the court deems appropriate and upon the application of the insurer or the Mayor, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue an order appropriate to effectuate the provisions of this subchapter.

(d) Notwithstanding any other provisions of law, for the purposes of this subchapter the sites of the ownership of the securities of domestic insurers shall be deemed to be in the District. (Oct. 21, 1993, D.C. Law 10-44, § 11, 40 DCR 6027; Sept. 8, 1995, D.C. Law 11-36, § 8(c), 42 DCR 3257; Feb. 27, 1996, D.C. Law 11-90, § 8(c), 42 DCR 7155; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(gg)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-3704.

**Effect of amendments.** — D.C. Law 11-90 substituted “§ 35-3703” for “§ 35-3702” in (b)(2).

D.C. Law 11- (Act 11-524) substituted “Commissioner” for “Superintendent” in (b)(2).

**Temporary amendment of section.** — D.C. Law 11-36 substituted “§ 35-3703” for “§ 35-3702” in (b)(2).

Section 11(b) of D.C. Law 11-36 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Insurance Omnibus Amendment Act of 1995, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 9(c) of the Insurance Omnibus Emergency Amendment Act of 1995 (D.C. Act 11-48, May 15, 1995, 42

DCR 2544) and § 8(c) of the Insurance Omnibus Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-97, July 19, 1995, 42 DCR 3844).

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Legislative history of Law 11-36.** — See note to 35-3706.

**Legislative history of Law 11-90.** — See note to § 35-3706.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-3701.

**Editor's notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, “subchapter” has been substituted for “chapter” throughout the section.

## § 35-3710. Sanctions.

(a)(1) Any insurer failing, without just cause, to file any registration statement as required in this subchapter shall be required, after notice and hearing, to pay an administrative penalty of \$1,000 for each day's delay, to be recovered by the Mayor and the penalty so recovered shall be paid into the District of Columbia Treasury. The maximum penalty under this section shall be \$100,000.

(2) The Mayor may reduce the penalty if the insurer demonstrates to the Mayor that the imposition of the penalty would constitute a financial hardship to the insurer.

(3) Adjudication of infractions under this section shall be pursuant to Chapter 27 of Title 6.

(b)(1) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to § 35-3705(a) or § 35-3706(a)(2) or (b), or which violate this subchapter, shall pay, in their individual capacity, a civil administrative penalty of not more than \$1,000 per violation, after notice and hearing before the Mayor.

(2) In determining the amount of the civil administrative penalty, the Mayor shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Adjudication of any infraction of this subsection shall be pursuant to Chapter 27 of Title 6.

(c)(1) Whenever it appears to the Mayor that any insurer subject to this subchapter, or any director, officer, employee, or agent, has engaged in any transaction or entered into a contract which is subject to § 35-3706 and which would not have been approved had approval been requested, the Mayor may order the insurer to immediately cease and desist any further activity under that transaction or contract.

(2) After notice and hearing the Mayor may also order the insurer to void any contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(d)(1) Whenever it appears to the Mayor that any insurer, or any director, officer, employee, or agent, has committed a willful violation of this subchapter, the Mayor may cause criminal proceedings to be instituted in the Superior Court of the District of Columbia against the insurer or the responsible director, officer, employee, or agent.

(2) Any insurer that willfully violates this subchapter may be fined not more than \$1,000,000.

(3) Any individual who willfully violates this subchapter may be fined in his or her individual capacity not more than \$750,000 or be imprisoned for not more than 1 to 3 years, or both.

(e) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to, or makes or causes to be made, any false statements, false reports, or false filings with the intent to deceive the Mayor in the performance of his or her duties under this subchapter, upon conviction, shall be imprisoned for not more than 3 to 5 years or fined \$100,000, or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to Chapter 27 of Title 6. (Oct. 21, 1993, D.C. Law 10-44, § 12, 40 DCR 6027.)

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Editor's notes.** — Because of the codifica-

tion of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, "subchap-



ter" has been substituted for "chapter" throughout the section.

### § 35-3711. Receivership.

Whenever it appears to the Mayor that any person has committed a violation of this subchapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the Commissioner may proceed as provided under the insurance laws of the District to take possession of the property of such a domestic insurer and to conduct its business, or take any other actions as the Mayor, at the Mayor's discretion, deems appropriate. (Oct. 21, 1993, D.C. Law 10-44, § 13, 40 DCR 6027; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(gg)(2), 44 DCR 1730.)

**Section references.** — This section is referred to in § 35-3704.

**Effect of amendments.** — D.C. Law 11- (Act 11-524) substituted "Commissioner" for "Superintendent."

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Legislative history of Law 11- (Act 11-524).** — See note to § 35-3701.

**Editor's notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

### § 35-3712. Recovery.

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment pursuant to clause (i) or (ii) of this subsection is made at any time during the 1 year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d) of this section.

(b) No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c)(1) Any person that was a parent corporation, holding company, or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable, under subsection (a) of this section, up to the amount of distributions or payments such a person received.

(2) Any person that otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions the person would have received if they had been paid immediately.

(3) If 2 or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation, holding company, or person who otherwise controlled it. (Oct. 21, 1993, D.C. Law 10-44, § 14, 40 DCR 6027; July 25, 1995, D.C. Law 11-30, § 8, 42 DCR 1547.)

**Effect of amendments.** — D.C. Law 11-30 validated previously made spelling changes in (c)(3) and (e).

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Legislative history of Law 11-30.** — Law 11-30, the “Technical Amendments Act of 1995,” was introduced in Council and assigned Bill

No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

## § 35-3713. Revocation, suspension, or nonrenewal of insurer’s license.

Whenever it appears to the Mayor that any person has committed a violation of this subchapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Mayor may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the insurer’s license or authority to do business in the District for such a period as the Mayor finds is required for the protection of policyholders or the public. Any determination shall be accompanied by specific findings of fact and conclusions of law. (Oct. 21, 1993, D.C. Law 10-44, § 15, 40 DCR 6027.)

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Editor’s notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

## § 35-3714. Judicial review; mandamus.

(a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the Mayor pursuant to this subchapter may appeal to the District of Columbia Court of Appeals, in accordance with § 1-1510.

(b) The filing of an appeal pursuant to this section shall not stay the application of any such rule, regulation, order, or other action of the Mayor to the appealing party unless the court, after giving the appealing party notice and an opportunity to be heard, determines that failure to grant such a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(c) Any person aggrieved by any failure of the Mayor to act or make a determination required by this subchapter may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Mayor to act or make such determination forthwith. (Oct. 21, 1993, D.C. Law 10-44, § 16, 40 DCR 6027.)

**Legislative history of Law 10-44.** — See note to § 35-3701.

**Editor's notes.** — Because of the codification of D.C. Law 11-159 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 37 as subchapter I, "subchapter" has been substituted for "chapter" in (a) and (c).

## *Subchapter II. Mutual Holding Companies.*

### **§ 35-3721. Formation of a mutual holding company.**

(a) A domestic mutual insurance company, upon approval of the Commissioner, may reorganize by directly or indirectly forming an insurance holding company based upon a mutual plan. The reorganized insurance company shall continue, without interruption, its corporate existence as a stock insurance company subsidiary to the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is subsidiary to the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 35-3703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, shall approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 35-3703(g)(13). A reorganization pursuant to this section is subject to § 35-3703(a), (b), and (c). The Commissioner shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company.

(d) Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company. (Sept. 20, 1996, D.C. Law 11-159, § 2, 43 DCR 3714.)

**Section references.** — This section is referred to in § 35-3724.

**Emergency act amendments.** — For temporary addition of §§ 35-3721 through 35-3728, see § 2-9 of the Mutual Holding Company

Emergency Act of 1996 (D.C. Act 11-288, July 1, 1996, 43 DCR 3707).

For temporary addition of §§ 35-3721 through 35-3728, see § 2-9 of the Mutual Holding Company Congressional Review Emer-



gency Act of 1996 (D.C. Act 11-368, August 21, 1996, 43 DCR 3721).

For temporary repeal of the Mutual Holding Company Emergency Act of 1996 (D.C. Act 11-288, July 1, 1996, 43 DCR 3707), see § 12 of the Mutual Holding Company Congressional Review Emergency Act of 1996 (D.C. Act 11-368, August 21, 1996, 43 DCR 4633).

**Legislative history of Law 11-159.** — Law 11-159, the “Mutual Holding Company Act of

1996,” was introduced in Council and assigned Bill No. 11-623, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 21, 1996, it was assigned Act No. 11-290 and transmitted to both Houses of Congress for its review. D.C. Law 11-159 became effective on September 20, 1996.

## § 35-3722. Merger of policyholder membership interests.

(a) A domestic mutual insurance company, upon the approval of the Commissioner, may reorganize by merging its policyholders’ membership interests into a mutual insurance holding company formed pursuant to this section and continuing the corporate existence of the reorganizing insurance company as a stock insurance company or as a stock insurance company subsidiary to an intermediate holding company which is a subsidiary to the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 35-3703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, shall approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the Commissioner finds necessary for the protection of the policyholders’ interests. The Commissioner may retain consultants as provided in § 35-3703(g)(3). A merger pursuant to this section is subject to § 35-3703(a), (b), and (c). The Commissioner shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company. A merger of policyholders’ membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to § 35-3703 and § 35-3703 is also applicable. (Sept. 20, 1996, D.C. Law 11-159, § 3, 43 DCR 3714.)

**Section references.** — This section is referred to in § 35-3724.

**Emergency act amendments.** — See notes to § 35-3721.

**Legislative history of Law 11-159.** — See note to § 35-3721.

§ 35-3723. **Incorporation of holding company.**

A mutual insurance holding company resulting from a reorganization of a domestic mutual insurance company organized under Chapter 6 of this title, shall be incorporated pursuant to chapters 3 through 8 of this title. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the Commissioner and Corporation Counsel of the District in the same manner as those of an insurance company. (Sept. 20, 1996, D.C. Law 11-159, § 4, 43 DCR 3714.)

**Section references.** — This section is referred to in §§ 35-3721 and 35-3722.

**Legislative history of Law 11-158.** — See note to § 35-3721.

**Emergency act amendments.** — See notes to § 35-3721.

§ 35-3724. **Insurers rehabilitation and liquidation.**

(a) A mutual insurance holding company is deemed to be an insurer subject to Chapter 28 of this title, and shall automatically be a party to any proceeding under Chapter 28 of this title involving an insurance company, which as a result of a reorganization pursuant to § 35-3721 or 35-3722 is a subsidiary of the mutual insurance holding company. In any proceeding under Chapter 28 of this title involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders.

(b) A mutual insurance holding company shall not dissolve or liquidate without the approval of the Commissioner or as ordered by the District Court pursuant to Chapter 28 of this title. (Sept. 20, 1996, D.C. Law 11-159, § 5, 43 DCR 3714.)

**Emergency act amendments.** — See notes to § 35-3721.

**Legislative history of Law 11-159.** — See note to § 35-3721.

§ 35-3725. **Applicability; membership interest; powers.**

(a) Section 19 of the Life Insurance Act is not applicable to a reorganization or merger pursuant to this section.

(b) A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in § 35-213.

(c) A mutual holding company created under this subchapter shall have the same powers to borrow or assume liability as a mutual insurance company organized under the provisions of District law. (Sept. 20, 1996, D.C. Law 11-159, § 6, 43 DCR 3714.)

**Emergency act amendments.** — See notes to § 35-3721.

**References in text.** — “Section 19 of the Life Insurance Act,” which is referred to in (a), is probably a reference to former § 35-418.

**Legislative history of Law 11-159.** — See note to § 35-3721.

## § 35-3726. Failure to give notice.

If the mutual company complies substantially and in good faith with the notice requirements of this subchapter, the mutual company's failure to give any member or members any required notice does not impair the validity of any action taken under this subchapter. (Sept. 20, 1996, D.C. Law 11-159, § 7, 43 DCR 3714.)

**Emergency act amendments.** — See notes to § 35-3721.

**Legislative history of Law 11-159.** — See note to § 35-3721.

## § 35-3727. Limitations of actions.

Any action challenging the validity of or arising out of acts taken or proposed to be taken under this subchapter shall be commenced within 30 days after the effective date of any plan submitted for approval pursuant to this subchapter. (Sept. 20, 1996, D.C. Law 11-159, § 8, 43 DCR 3714; Apr. 9, 1997, D.C. Law 11-202, § 4, 43 DCR 6054.)

**Effect of amendments.** — D.C. Law 11-202 inserted “any plan submitted for approval pursuant to.”

**Emergency act amendments.** — See notes to § 35-3721.

For temporary amendment of section, see § 2 of the Mutual Holding Company Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-449, December 10, 1996, 43 DCR 6866), and § 2 of the Mutual Holding Company Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-6, March 3, 1997, 44 DCR 1619).

Section 4 of D.C. Act 11-449 provides for application of the act.

For temporary amendment of § 8 of the Mutual Holding Company Act of 1996 (D.C. Act

11-290) to conform with this section, see § 11 of the Mutual Holding Company Congressional Review Emergency Act of 1996 (D.C. Act 11-368, August 21, 1996, 43 DCR 4633).

**Legislative history of Law 11-202.** — Law 11-202, the “Medicare Supplement Insurance Minimum Standards Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-627. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 5, 1996, it was assigned Act No. 11-367 and transmitted to both Houses of Congress for its review. D.C. Law 11-202 became effective on , 1996. D.C. Law 11-202 became effective on April 9, 1994.

## § 35-3728. Rulemaking.

The Mayor, pursuant to Subchapter I of Chapter 15 of Title 1, may issue rules and regulations to implement the provisions of this subchapter. (Sept. 20, 1996, D.C. Law 11-159, § 9, 43 DCR 3714.)

**Emergency act amendments.** — See notes to § 35-3721.

**Legislative history of Law 11-159.** — See note to § 35-3721.



## CHAPTER 38. LIFE INSURANCE ACTUARIAL OPINION OF RESERVES.

Sec.

35-3801. Actuarial opinion of reserves.

**§ 35-3801. Actuarial opinion of reserves.**

(a) *General requirements and guidelines.* — (1) Every life insurance company doing business in the District of Columbia shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Mayor, by regulation, are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with § 35-501 and all applicable laws of the District of Columbia. The Mayor by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(2) For each year ending on or after December 31, 1993, the opinion shall be submitted with the annual statements and reports required by §§ 35-103 and 35-202, and Chapter 32 of this title.

(3) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the Mayor as specified by regulation.

(4) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards the Mayor may prescribe by regulation.

(5) In the case of an opinion required to be submitted by a foreign or alien company, the Mayor may accept the opinion filed by that company with the insurance supervisory official of another state if the Mayor determines that the opinion reasonably meets the requirements applicable to a company domiciled in the District of Columbia.

(6) For the purposes of this section, the term “qualified actuary” means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations.

(7) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the Mayor, for any act, error, omission, decision, or conduct with respect to the actuary’s opinion.

(8) Disciplinary action by the Mayor against the company or the qualified actuary shall be defined in regulations by the Mayor.

(9) A memorandum, in form and substance acceptable to the Mayor as specified by regulation, shall be prepared to support each actuarial opinion.

(10) If the insurance company fails to provide a supporting memorandum at the request of the Mayor within a period specified by regulation, or the Mayor determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the Mayor, the Mayor may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare any supporting memorandum required by the Mayor.

(11) Any memorandum in support of the opinion, and any other supporting material provided by the company to the Mayor, shall be kept confidential by the Mayor and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder. However, the memorandum or other material may otherwise be released by the Mayor with the written consent of the company, upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Mayor for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall no longer be confidential.

(b) *Actuarial analysis of reserves and assets supporting reserves.* — (1) Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection (a)(1) of this section an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Mayor by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(2) The Mayor may provide by regulation for a transition period during which a life insurance company may establish any higher reserves that the qualified actuary deems necessary in order to render the opinion required by this section. (Oct. 21, 1993, D.C. Law 10-50, § 2, 40 DCR 6117.)

**Section references.** — This section is referred to in § 35-4703.

**Legislative history of Law 10-50.** — D.C. Law 10-50, the "Life Insurance Actuarial Opinion of Reserves Act of 1993," was introduced in Council and assigned Bill No. 10-133, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the

Mayor on August 4, 1993, it was assigned Act No. 10-95 and transmitted to both Houses of Congress for its review. D.C. Law 10-50 became effective on October 21, 1993.

**Delegation of Authority Pursuant to D.C. Law 10-50, the Life Insurance Actuarial Opinion of Reserves Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## CHAPTER 39. PROPERTY AND LIABILITY INSURANCE GUARANTY ASSOCIATION.

Sec.

- 35-3901. Definitions.
- 35-3902. Applicability.
- 35-3903. Creation of the Association.
- 35-3904. Board of directors.
- 35-3905. Powers and duties of the Association.
- 35-3906. Plan of operation.
- 35-3907. Powers and duties of the Mayor.
- 35-3908. Effect of paid claims.

Sec.

- 35-3909. Nonduplication of recovery.
- 35-3910. Prevention of insolvencies.
- 35-3911. Examination of the Association.
- 35-3912. Tax exemption.
- 35-3913. Recognition of assessments in rates.
- 35-3914. Immunity from liability.
- 35-3915. Stay of proceedings; access to records.

### § 35-3901. Definitions.

For the purposes of this chapter, the term:

- (1) "Account" means any 1 of the 3 accounts created by § 35-3903.
- (2) "Affiliate" means a person who, directly or indirectly, through 1 or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31st of the year next preceding the date the insurer becomes an insolvent insurer.
- (3) "Association" means the District of Columbia Insurance Guaranty Association created pursuant to § 35-3903.
- (4) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.
- (5) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
- (6) "Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such an insurer becomes an insolvent insurer after October 21, 1993, and:
  - (A) The claimant or insured is a resident of the District at the time of the insured event, provided that for entities other than an individual, the principal place of business of the claimant or insured is located in the District at the time of the insured event; or
  - (B) The property from which the claim arises is permanently located in the District. The term "covered claim" shall not include any amount awarded as punitive or exemplary damages, sought as a return of premium under any retrospective rating plan, or due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries or otherwise.
- (7) "District" means the District of Columbia.



(8) "Insolvent insurer" means an insurer licensed to transact insurance in the District of Columbia, either at the time the policy was issued or when the insured event occurred, and against whom an order of liquidation with a finding of insolvency has been entered after October 21, 1993, by a court of competent jurisdiction in the insurer's state of domicile or of the District under § 35-2816, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

(9) "Member insurer" means any person who:

(A) Writes any kind of insurance to which this chapter applies under § 35-3902, including the exchange of reciprocal or interinsurance contracts; and

(B) Is licensed to transact insurance in the District.

(10) "Net direct written premiums" means direct gross premiums written in the District on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on the direct business. The term "net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(11) "Person" means any individual, corporation, partnership, association, or voluntary organization. (Oct. 21, 1993, D.C. Law 10-51, § 2, 40 DCR 6120; May 16, 1995, D.C. Law 10-255, § 33, 41 DCR 5193.)

**Section references.** — This section is referred to in § 35-3903.

**Effect of amendments.** — D.C. Law 10-255 validated previously made changes in (8).

**Legislative history of Law 10-51.** — D.C. Law 10-51, the "Property and Liability Insurance Guaranty Association Act of 1993," was introduced in Council and assigned Bill No. 10-134, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-96 and transmitted to both Houses of Congress for its review. D.C. Law 10-51 became effective on October 21, 1993.

**Legislative history of Law 10-255.** — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**Delegation of Authority Pursuant to D.C. Law 10-51, the Property and Liability Insurance Guaranty Association Act of 1993.** — See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-3902. Applicability.

This chapter shall apply to all kinds of direct insurance, but shall not be applicable to the following:

- (1) Life, annuity, health, or disability insurance;
- (2) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts;
- (6) Title insurance;
- (7) Ocean marine insurance;

(8) Any transaction or combination of transactions between a person, including affiliates of such a person, and an insurer, including affiliates of such an insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or

(9) Any insurance provided by or guaranteed by government. (Oct. 21, 1993, D.C. Law 10-51, § 3, 40 DCR 6120.)

**Section references.** — This section is referred to in § 35-3901.

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3903. Creation of the Association.

There is created a nonprofit unincorporated legal entity to be known as the District of Columbia Insurance Guaranty Association. All insurers defined as member insurers in § 35-3901(9) shall be and remain members of the Association as a condition of their authority to transact insurance in the District. The Association shall perform its functions under a plan of operation established and approved under § 35-3906 and shall exercise its powers through a board of directors established under § 35-3904. For purposes of administration and assessment, the Association shall be divided into 3 separate accounts:

- (1) The workmen's compensation insurance account;
- (2) The automobile insurance account; and
- (3) The account for all other insurance to which this chapter applies. (Oct. 21, 1993, D.C. Law 10-51, § 4, 40 DCR 6120.)

**Section references.** — This section is referred to in § 35-3901.

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3904. Board of directors.

(a) The board of directors of the Association shall consist of not fewer than 5 nor more than 9 persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the Mayor. Vacancies on the board shall be filled for the remainder of the term by a majority vote of the remaining board members subject to the approval of the Mayor. If no members are selected within 60 days after October 21, 1993, the Mayor may appoint the initial members of the board of directors.

(b) In approving selections to the board of directors, the Mayor shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board of directors may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors. (Oct. 21, 1993, D.C. Law 10-51, § 5, 40 DCR 6120.)

**Section references.** — This section is referred to in §§ 35-3903 and 35-3906.

**Legislative history of Law 10-51.** — See note to § 35-3901.

**§ 35-3905. Powers and duties of the Association.**

(a) The Association shall:

(1) Be obligated to pay covered claims existing prior to the determination of the insolvency arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination of insolvency, or before the insured replaces the policy or causes its cancellation, if the insured does so within 30 days of the determination. The obligation shall extend to covered claims reported pursuant to an optional extended period to report claims sold to the insured by the liquidator. The obligation as to covered claims shall be satisfied by paying to the claimant an amount as follows:

(A) The full amount of a covered claim for benefits under a workers' compensation insurance coverage;

(B) An amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; or

(C) An amount not exceeding \$300,000 per claimant for all other covered claims.

In no event shall the Association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises. Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the Guaranty Fund after the earlier of the final date for the filing of claims against the liquidator or receiver of an insolvent insurer or 18 months after the order of liquidation. The Association shall pay only that amount of each unearned premium which is in excess of \$100;

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) Allocate claims paid and expenses incurred among the 3 accounts separately, and assess member insurers, separately for each account, amounts necessary to pay the obligations of the Association under paragraph (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any one year on any account an amount greater than 2% of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be



paid as soon thereafter as funds become available. The Association shall pay claims in any order which it deems reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such a payment will not reduce capital or surplus below required minimums. These payments shall be refunded to those companies receiving larger assessments by virtue of such a deferment, or at the election of any company, credited against future assessments. Each member insurer may set off, against any assessment, authorized payments made on covered claims and expenses incurred in the payment of these claims by the member insurer if they are chargeable to the account for which the assessment is made;

(4) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims. The Association may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(5) Notify those persons the Mayor directs under § 35-3907(b)(1);

(6) Handle claims through its employees or through 1 or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Mayor, but the designation may be declined by a member insurer; and

(7) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association and shall pay the other expenses of the Association authorized by this chapter.

(b) The Association may:

(1) Employ or retain those persons necessary to handle claims and perform other duties of the Association;

(2) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;

(3) Sue or be sued;

(4) Negotiate and become a party to those contracts necessary to carry out the purposes of this chapter;

(5) Perform any other acts necessary or proper to effectuate the purposes of this chapter; and

(6) Refund to the member insurers, in proportion to the contribution of each member insurer to that account, that amount by which the assets of the account exceed the liabilities, if at the end of any calendar year, the board of directors finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year. (Oct. 21, 1993, D.C. Law 10-51, § 6, 40 DCR 6120.)

**Section references.** — This section is referred to in § 35-3906.

**Legislative history of Law 10-51.** — See note to § 35-3901.

## § 35-3906. Plan of operation.

(a)(1) The Association shall submit to the Mayor a plan of operations, and any amendments thereto, necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Mayor.

(2) If the Association fails to submit a suitable plan of operation within 90 days following October 21, 1993, or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Mayor shall, after notice and hearing, issue those reasonable rules necessary or advisable to effectuate the provisions of this chapter. These rules shall continue in force until modified by the Mayor or superseded by a plan submitted by the Association and approved by the Mayor.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the Association under § 35-3905 will be performed;

(2) Establish procedures for handling assets of the Association;

(3) Establish the amount and method of reimbursing members of the board of directors under § 35-3904;

(4) Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of claims shall be periodically submitted to the Association or similar organization in another jurisdiction by the receiver or liquidator;

(5) Establish regular places and times for meetings of the board of directors;

(6) Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the board of directors;

(7) Provide that any member insurer aggrieved by any final action or decision of the Association may appeal to the Mayor within 30 days after the action or decision;

(8) Establish the procedures whereby selections for the board of directors will be submitted to the Mayor; and

(9) Contain additional provisions necessary and proper for the execution of the powers and duties of the Association.

(d) The plan of operation may provide that any or all powers and duties of the Association, except those under § 35-3905(a)(3) and (b)(2), are delegated to a corporation, association, or other organization which performs, or will perform, functions similar to those of this Association or its equivalent in 2 or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this

subsection shall take effect only with the approval of both the board of directors and the Mayor, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. (Oct. 21, 1993, D.C. Law 10-51, § 7, 40 DCR 6120.)

**Section references.** — This section is referred to in § 35-3903.

**Legislative history of Law 10-51.** — See note to § 35-3901.

## § 35-3907. Powers and duties of the Mayor.

(a) The Mayor shall:

(1) Notify the Association of the existence of an insolvent insurer not later than 3 days after he or she receives notice of the determination of the insolvency. The Association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction; and

(2) Upon request of the board of directors, provide the Association with a statement of the net direct written premiums of each member insurer.

(b) The Mayor may:

(1) Require that the Association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation in the District shall be sufficient;

(2) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in the District of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Mayor may levy a fine on any member insurer which fails to pay an assessment when due. Such a fine shall not exceed 5% of the unpaid assessment per month, except that no fine shall be less than \$100 per month; or

(3) Revoke the designation of any servicing facility if the Mayor finds claims are being handled unsatisfactorily.

(c) Any final action or order of the Mayor under this chapter shall be subject to judicial review in accordance with § 1-1510. (Oct. 21, 1993, D.C. Law 10-51, § 8, 40 DCR 6120.)

**Section references.** — This section is referred to in § 35-3905.

**Legislative history of Law 10-51.** — See note to § 35-3901.

## § 35-3908. Effect of paid claims.

(a) Any person recovering under this chapter shall be deemed to have assigned his or her rights under the policy to the Association to the extent of his or her recovery from the Association. Every insured or claimant seeking the protection of this chapter shall cooperate with the Association to the same



extent as that person would have been required to cooperate with the insolvent insurer. The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except those causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer and except as provided in subsection (b) of this section. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the Association shall not operate to reduce the liability of the insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The Association shall have the right to recover from the following persons the amount of any covered claim paid on behalf of such a person pursuant to the chapter:

(1) Any insured whose net worth on December 31st of the year next preceding the date the insurer becomes an insolvent insurer exceeds \$50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter; and

(2) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter.

(c) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another jurisdiction. The court having jurisdiction shall grant these claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the Association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(d) The Association shall periodically file, with the receiver or liquidator of the insolvent insurer, statements of the covered claims paid by the Association and estimates of anticipated claims on the Association which shall preserve the rights of the Association against the assets of the insolvent insurer. (Oct. 21, 1993, D.C. Law 10-51, § 9, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.

## § 35-3909. Nonduplication of recovery.

(a) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his or her right under such a policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such an insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the Association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, he or she shall seek recovery first from the Association of the location of the property, and if it is a workers' compensation claim, he or she shall seek recovery first

from the Association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. (Oct. 21, 1993, D.C. Law 10-51, § 10, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3910. Prevention of insolvencies.

To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors may, upon majority vote:

(A) Make recommendations to the Mayor for the detection and prevention of insurer insolvencies; and

(B) Respond to requests by the Mayor to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. The recommendations shall not be considered public documents.

(2) The board of directors may, at the conclusion of any domestic insurer insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of the insolvency, based on the information available to the Association, and submit the report to the Mayor. (Oct. 21, 1993, D.C. Law 10-51, § 11, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3911. Examination of the Association.

The Association shall be subject to examination and regulation by the Mayor. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the Mayor. (Oct. 21, 1993, D.C. Law 10-51, § 12, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3912. Tax exemption.

The Association shall be exempt from payment of all fees and all taxes levied by the District, except taxes levied on real or personal property. (Oct. 21, 1993, D.C. Law 10-51, § 13, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3913. Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association by the member insurer less any amounts returned to

the member insurer by the Association, and these rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer. (Oct. 21, 1993, D.C. Law 10-51, § 14, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3914. Immunity from liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the board of directors, or the Mayor or his or her representatives for any action taken or any failure to act by them in the performance of their powers and duties under this chapter. (Oct. 21, 1993, D.C. Law 10-51, § 15, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.

### § 35-3915. Stay of proceedings; access to records.

(a) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in the District of Columbia shall be stayed for 6 months, and any additional time thereafter as may be determined by the court, from the date the insolvency is determined or an ancillary proceeding is instituted in the District, whichever is later, to permit proper defense by the Association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the Association, either on its own behalf or on behalf of the insured, may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and shall be permitted to defend the claim on the merits.

(b) The liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter shall permit access by the board of directors or its authorized representative, to any of the insolvent insurer's records which are necessary for the board of directors in carrying out its functions under this chapter with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board of directors, or its representative, with copies of the records upon the request by the board and at the expense of the board. (Oct. 21, 1993, D.C. Law 10-51, § 16, 40 DCR 6120.)

**Legislative history of Law 10-51.** — See note to § 35-3901.



# CHAPTER 40. BUSINESS TRANSACTED WITH PRODUCER CONTROLLED INSURER.

Sec.

35-4001. Definitions.

35-4002. Applicability.

35-4003. Applicability of minimum standards.

35-4004. Required contract provisions.

Sec.

35-4005. Audit committee.

35-4006. Reporting requirements.

35-4007. Disclosure.

35-4008. Penalties.

## § 35-4001. Definitions.

For the purposes of this chapter, the term:

(1) "Accredited state" means a jurisdiction in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners ("NAIC").

(2) "Captive insurers" means insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies, or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

(2A) "Commissioner" means the Commissioner of Insurance and Securities.

(3) "Control" or "controlled" has the meaning ascribed in § 35-3701(2).

(4) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

(5) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(6) "Holding company system" has the meaning ascribed in § 35-3701(4).

(7) "Licensed insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property/casualty insurance business in the District of Columbia. The following, inter alia, are not licensed insurers for the purposes of this chapter:

(A) All risk retention groups as defined in the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), the Product Liability Risk Retention Act of 1981 (15 U.S.C. § 3901 et seq.), and § 35-2901;

(B) All residual market pools and joint underwriting authorities or associations; and

(C) All captive insurers.

(8) "Producer" means an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, such a person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

(9) Repealed. (Oct. 21, 1993, D.C. Law 10-52, § 2, 40 DCR 6129; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10(hh), 44 DCR 1730.)

**Effect of amendments.** — D.C. Law 11- (Act 11-524) inserted (2A); and repealed (9).

**Legislative history of Law 10-52.** — D.C. Law 10-52, the “Business transacted with Producer Controlled Insurer Act of 1993,” was introduced in Council and assigned Bill No. 10-135, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-97 and transmitted to both Houses of Congress for its review. D.C. Law 10-52 became effective on October 21, 1993.

**Legislative history of Law 11- (Act 11-524).** — Law 11- (Act 11-524), the “Department of Insurance and Securities Regulation Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-415, which was

referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11 (Act 11-524) is projected to become law on May 22, 1997.

**Mayor authorized to issue rules.** — Section 10 of D.C. Law 10-52 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

**Delegation of Authority Pursuant to D.C. Law 10-52, the Business Transacted with Producer Controlled Insurance Act of 1993.** — See Mayor’s Order 94-54, March 7, 1994 (41 DCR 1433).

## § 35-4002. Applicability.

This chapter shall apply to licensed insurers either domiciled in the District of Columbia or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of Chapter 37 of this title, to the extent they are not superseded by this chapter, shall continue to apply to all parties within holding company systems subject to this chapter. (Oct. 21, 1993, D.C. Law 10-52, § 3, 40 DCR 6129.)

**Legislative history of Law 10-52.** — See note to § 35-4001.

## § 35-4003. Applicability of minimum standards.

(a) The provisions of §§ 35-4004, 35-4005, and 35-4006 shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer’s quarterly statement filed as of September 30 of the prior year.

(b) Subsection (a) of this section shall not apply if:

(1) The controlling producer:

(A) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer’s holding company system, or the controlled insurer’s parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with the insurance; and

(B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer. (Oct. 21, 1993, D.C. Law 10-52, § 4, 40 DCR 6129.)

Legislative history of Law 10-52. — See note to § 35-4001.

### § 35-4004. Required contract provisions.

A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer, and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for termination.

(2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract.

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with applicable provisions of insurance law of the District of Columbia. Funds of a controlling producer not required to be licensed in the District of Columbia shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract shall not be assigned in whole or in part by the controlling producer.

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees shall be included. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (7) of this section, examples of "comparable



business” include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer’s profits on that business, then the compensation shall not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer’s reserves on remaining claims has been independently verified pursuant to paragraphs (1) and (6) of this section.

(10) The contract provides a limit on the controlling producer’s writings in relation to the controlled insurer’s surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate, but shall not bind, reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules. (Oct. 21, 1993, D.C. Law 10-52, § 5, 40 DCR 6129; May 16, 1995, D.C. Law 10-255, § 34, 41 DCR 5193.)

**Effect of amendments.** — D.C. Law 10-255 validated a previously made change in (11).

**Legislative history of Law 10-52.** — See note to § 35-4001.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

## § 35-4005. Audit committee.

Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer’s independent certified public accountants, and an independent casualty actuary, or other independent loss reserve specialist acceptable to the Mayor, to review the adequacy of the insurer’s loss reserves. (Oct. 21, 1993, D.C. Law 10-52, § 6, 40 DCR 6129.)

**Section references.** — This section is referred to in § 35-4003.

**Legislative history of Law 10-52.** — See note to § 35-4001.

## § 35-4006. Reporting requirements.

(a) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the Mayor an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the Mayor reporting loss reserve for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including that incurred, but not reported, on business placed by the producer.

(b) The controlled insurer shall annually report to the Mayor the amount of commissions paid to the producer, the percentage the amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance. (Oct. 21, 1993, D.C. Law 10-52, § 7, 40 DCR 6129; March 17, 1994, D.C. Law 10-76, § 9, 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 9, 41 DCR 1005.)

**Section references.** — This section is referred to in § 35-4003.

**Legislative history of Law 10-52.** — See note to § 35-4001.

**Legislative history of Law 10-76.** — Law 10-76, the “Insurance Omnibus Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-418. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-148 and transmitted to both Houses of Congress for its review. D.C. Law 10-76 became effective on March 17, 1994.

**Legislative history of Law 10-103.** — Law 10-103, the “Insurance Omnibus Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

## § 35-4007. Disclosure.

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his or her records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured. (Oct. 21, 1993, D.C. Law 10-52, § 8, 40 DCR 6129.)

**Legislative history of Law 10-52.** — See note to § 35-4001.

## § 35-4008. Penalties.

(a)(1) If the Mayor believes that the controlling producer or any other person has not materially complied with this chapter, or any regulation or order promulgated hereunder, after notice and opportunity to be heard, the Commissioner may order the controlling producer to cease placing business with the controlled insurer; and

(2) If it was found that because of material noncompliance the controlled insurer or any policyholder has suffered any loss or damage, the Mayor may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or for other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Chapter 28 of this title, and the receiver appointed under that order believes that the controlling producer, or any other person, has not materially complied with this chapter, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the Mayor to impose any other penalties provided under the insurance laws of the District of Columbia.

(d) Nothing contained in this section shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties. (Oct. 21, 1993, D.C. Law 10-52, § 9, 40 DCR 6129; \_\_\_\_\_, 1997, D.C. Law 11- (Act 11-524), § 10, 44 DCR 1730.)

**Legislative history of Law 10-52.** — See note to § 35-4001.



## CHAPTER 41. INSURANCE INDUSTRY MATERIAL TRANSACTIONS DISCLOSURES.

Sec.

35-4101. Report requirement.

35-4102. Acquisition and disposition of assets.

35-4103. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

sions of ceded reinsurance agreements.

### § 35-4101. Report requirement.

(a) Every insurer domiciled in the District of Columbia shall file a report with the Commissioner of Insurance and Securities ("Commissioner") disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless such acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements that have been submitted to the Commissioner for review, approval, or information purposes pursuant to other provisions of the insurance code, laws, regulations, or other requirements.

(b) The report required in subsection (a) of this section is due within 15 days after the end of the calendar month in which any of the transactions enumerated in subsection (a) of this section occur.

(c) One complete copy of the report, including any exhibits or other attachments, shall be filed with:

- (1) The insurance department of the insurer's state of domicile; and
- (2) The National Association of Insurance Commissioners.

(d) All reports obtained by or disclosed to the Commissioner pursuant to this chapter shall be given confidential treatment and shall not be subject to subpoena, shall not be subject to disclosure under subchapter II of Chapter 15 of Title 1, and shall not be made public by the Commissioner, the National Association of Insurance Commissioners, or any other person except to insurance departments of other states, without the prior written consent of the insurer to which it pertains, unless the Commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part in the manner the Commissioner may deem appropriate. (May 24, 1996, D.C. Law 11-123, § 2, 43 DCR 1542.)

**Section references.** — This section is referred to in §§ 35-4102 and 35-4103.

**Legislative history of Law 11-123.** — Law 11-123, the "Insurance Industry Material Transactions Disclosure Act of 1996," was introduced in Council and Assigned Bill No. 11-239, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the mayor on March 15, 1996, it was assigned Act No. 11-230 and transmitted to both Houses of Congress for its review. D.C. Law 11-123 became effective on May 24, 1996.

sumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the mayor on March 15, 1996, it was assigned Act No. 11-230 and transmitted to both Houses of Congress for its review. D.C. Law 11-123 became effective on May 24, 1996.

### § 35-4102. Acquisition and disposition of assets.

(a) No acquisition or disposition of assets need be reported pursuant to § 35-4101 if the acquisitions or dispositions are not material. For purposes of this chapter, a material acquisition (or the aggregate of any series of related

acquisitions during any 30-day period) or disposition (or the aggregate of any series of related dispositions during any 30-day period) is one that is nonrecurring and not in the ordinary course of business and involves more than 5% of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(b)(1) Asset acquisitions subject to this chapter include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(2) Asset dispositions subject to this chapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

(c) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of, or reason for, the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed.

(d) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if:

(1) The insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement; and

(2) The net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus. (May 24, 1996, D.C. Law 11-123, § 3, 43 DCR 1542.)

**Legislative history of Law 11-123.** — See note to § 35-4101.

### **§ 35-4103. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.**

(a) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported pursuant to § 35-4101 if the nonrenewals, cancellations, or revisions are not material.

(b) For purposes of this chapter, a material nonrenewal, cancellation, or revision is one that affects:

(1) As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(A) More than 50% of the insurer's total ceded written premium; or

(B) More than 50% of the insurer's total ceded indemnity and loss adjustment reserves.

(2) As respects life, annuity, and accident and health business, more than 50% of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.

(c) As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:

(1) An authorized reinsurer representing more than 10% of a total cession is replaced by one or more unauthorized reinsurers; or

(2) Previously established collateral requirements that have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than 10% of a total cession.

(d) No filing shall be required if:

(1) As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than 10% of its total written premium for direct and assumed business; or

(2) As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10% of the statutory reserve requirement prior to any cession.

(e) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(1) Effective date of the nonrenewal, cancellation, or revision;

(2) The description of the transaction with an identification of the initiator thereof;

(3) Purpose of, or reason for, the transaction; and

(4) If applicable, the identity of the replacement reinsurers.

(f) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrange-



ment represents less than 5% of the insurer's capital and surplus. (May 24, 1996, D.C. Law 11-123, § 4, 43 DCR 1542.)

**Legislative history of Law 11-123.** — See note to § 35-4101.

CHAPTER 42. INSURANCE DEMUTUALIZATION.

Sec.

- 35-4201. Definitions.
- 35-4202. Adoption of the plan of conversion by the board of directors.
- 35-4203. Approval of the plan of conversion by the Commissioner of Insurance and Securities.
- 35-4204. Approval of the plan by the members.
- 35-4205. Adoption of revised articles of incorporation.
- 35-4206. Required provisions in a plan of conversion.
- 35-4207. Optional provisions in a plan of conversion.

Sec.

- 35-4208. Alternative plan of conversion.
- 35-4209. Effective date of the plan.
- 35-4210. Rights of members whose policies are issued after adoption of the plan and before its effective date.
- 35-4211. Corporate existence.
- 35-4212. Conflict of interest.
- 35-4213. Costs and expenses.
- 35-4214. Failure to give notice.
- 35-4215. Limitation of actions.

§ 35-4201. Definitions.

For the purposes of this chapter, the term:

(1) "Converted stock company" means a District of Columbia domiciled stock company that converted from a District of Columbia mutual company pursuant to this chapter.

(1A) "Commissioner" means the Commissioner of Insurance and Securities.

(2) "District" means the District of Columbia.

(3) "Eligible member" means a member whose policy is in force as of the date the mutual company's board of directors adopts a plan of conversion.

(A) A person insured under a group policy is not an eligible member, unless:

(i) The person is insured or covered under a group life policy or group annuity contract under which funds are accumulated and allocated to the respective covered person;

(ii) The person has the right to direct the application of the funds so allocated;

(iii) The group policyholder makes no contribution to the premiums or deposits for the policy or contract; and

(iv) The mutual company has the names and addresses covered under the group policy or group annuity contract.

(B) A person whose policy is issued after the board of directors adopts the plan but before the plan's effective date is not an eligible member, but shall have those rights set forth in § 35-4210.

(4) "Plan of conversion" or "plan" means a plan adopted by a District of Columbia domestic mutual company's board of directors pursuant to this chapter to convert the mutual company into a District of Columbia domiciled stock company.

(5) "Policy" includes an annuity contract.

(6) Repealed. (May 24, 1996, D.C. Law 11-126, § 2, 43 DCR 1551.)

**Legislative history of Law 11-126.** — Law 11-126, the "Insurance Demutualization Act of 1996," was introduced in Council and assigned

Bill No. 11-389, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-233

and transmitted to both Houses of Congress for its review. D.C. Law 11-126 became effective on May 24, 1996.

### **§ 35-4202. Adoption of the plan of conversion by the board of directors.**

(a) A mutual company seeking to convert to a stock company shall, by the affirmative vote of  $\frac{2}{3}$  of its board of directors, adopt a plan of conversion consistent with the requirements of § 35-4206.

(b) At any time before approval of a plan by the Commissioner, the mutual company, by the affirmative vote of  $\frac{2}{3}$  of its board of directors, may amend or withdraw the plan. (May 24, 1996, D.C. Law 11-126, § 3, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

### **§ 35-4203. Approval of the plan of conversion by the Commissioner of Insurance and Securities.**

(a) After adoption by the mutual company's board of directors, the plan shall be submitted to the Commissioner for review and approval. The Commissioner shall approve the plan upon finding that:

- (1) The provisions of this section have been complied with;
- (2) The plan will not prejudice the interests of the members; and
- (3) The plan's method of allocating subscription rights is fair and equitable.

(b) Prior to the members' approval of the plan, a mutual company seeking the Commissioner's approval of a plan shall file the following documents with the Commissioner for review and approval:

- (1) The plan of conversion, including the independent evaluation of pro forma market value required by § 35-4206(f);
- (2) The form of notice required by § 35-4204(b) for eligible members of the meeting to vote on the plan;
- (3) Any proxies to be solicited from eligible members pursuant to § 35-4204(c);
- (4) The form of notice required by § 35-4210(a) for persons whose policies are issued after adoption of the plan but before its effective date; and
- (5) The proposed articles of incorporation and bylaws of the converted stock company. Once filed, these documents shall be approved or disapproved by the Commissioner within a reasonable time.

(c) After the members have approved the plan, the converted stock company shall file the following documents with the Commissioner:

- (1) The minutes of the meeting of the members at which the plan was voted upon; and
- (2) The revised articles of incorporation and bylaws of the converted stock company.

(d) The Commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the Commissioner's staff to assist in



reviewing the plan and the independent evaluation of the pro forma market value which is required by § 35-4206(i). (May 24, 1996, D.C. Law 11-126, § 4, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4204. Approval of the plan by the members.

(a) All eligible members shall be given notice of and an opportunity to vote upon the plan.

(b) All eligible members shall be given notice of the members' meeting to vote upon the plan. A copy of the plan or a summary of the plan shall accompany the notice. The notice shall be mailed to each member's last known address, as shown on the mutual company's records, within 45 days of the Commissioner's approval of the plan. The meeting to vote upon the plan shall not be set for a date less than 60 days after the date when the notice of the meeting is mailed by the mutual company. If the meeting to vote upon the plan is held coincident with the mutual company's annual meeting of policyholders, only one combined notice of meeting is required.

(c) After approval by the Commissioner, the plan shall be adopted upon receiving the affirmative vote of at least  $\frac{2}{3}$  of the votes cast by eligible members. Members entitled to vote upon the proposed plan may vote in person or by proxy. Any proxies to be solicited from eligible members shall be filed with and approved by the Commissioner. The number of votes each eligible member may cast shall be determined by the mutual company bylaws. If the bylaws are silent, each eligible member may cast one vote. (May 24, 1996, D.C. Law 11-126, § 5, 43 DCR 1551.)

**Section references.** — This section is referred to in § 35-4203.

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4205. Adoption of revised articles of incorporation.

(a) Adoption of the revised articles of incorporation of the converted stock company is necessary to implement the plan and shall be governed by the applicable provisions of District law.

(b) For a Class 1 mutual company, the members may adopt the revised articles of incorporation at the same meeting at which the members approve the plan.

(c) For a Class 2 or 3 mutual company, the revised articles of incorporation may be adopted solely by the board of directors or trustees, as provided by District law. (May 24, 1996, D.C. Law 11-126, § 6, 43 DCR 1551.)

**Section references.** — This section is referred to in § 35-4207.

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4206. Required provisions in a plan of conversion.

(a) The plan shall set forth the reasons for the proposed conversion.

(b) The plan shall provide that all policies in force on the effective date of conversion shall continue to remain in force under the terms of those policies, except that any voting rights of the policyholders provided for under the policies or under District law and any contingent liability policy provisions of the type described in District law shall be extinguished on the effective date of the conversion.

(c) The plan shall further provide that the holders of participating policies in effect on the date of conversion shall continue to have the right to receive dividends as provided in the participating policies, if any.

(d) Except mutual company's life policies, guaranteed reviewable accident and health policies, and noncancelable accident and health policies, the converted stock company may issue the insured a nonparticipating policy as a substitute for the participating policy upon the renewal date of a participating policy.

(e) The plan shall provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of the converted stock company. As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of a corporation organized and owned by the mutual company for the purpose of purchasing and holding all the stock of the converted stock company, or a stock insurance company owned by the mutual company into which the mutual company will be merged.

(f) The subscription rights shall be allocated in whole shares among the eligible members using a fair and equitable formula. This formula may, but need not, take into account how the different classes of policies of the eligible members contributed to the surplus of the mutual company.

(g) The plan shall provide a fair and equitable means for the allocation of shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights received pursuant to subsection (e) of this section.

(h) The plan shall provide that any shares of capital stock not subscribed to by eligible members exercising subscription rights received under subsections (e) and (f) of this section shall be sold in a public offering through an underwriter. If the shares of capital stock not subscribed to by eligible members is so small in number as to not warrant the expense of a public offering, the plan of conversion may provide for the purchase of the unsubscribed shares by a private placement or other alternative method approved by the Commissioner that is fair and equitable to the eligible members.

(i) The plan shall set the total price of the capital stock equal to the estimated pro forma market value of the converted stock company based upon an independent evaluation by a qualified person. The pro forma market value may be the value that is estimated to be necessary to attract full subscription for shares as indicated by the independent evaluation.

(j) The plan shall set the purchase price of each share of capital stock equal to any reasonable amount that will not inhibit the purchase of shares by

members. The purchase price of each share shall be uniform for all purchasers, except the price may be modified by the Commissioner by reason of his or her consideration of a plan for the purchase of unsubscribed stock pursuant to subsection (h) of this section.

(k) The plan shall provide for a closed block of business for participating life policies of a Class 1 mutual company.

(1) The plan shall provide that a Class 1 mutual company's participating life policies in force on the effective date of the conversion shall be operated by the converted stock company for dividend purposes as a closed block of participating business, except that any or all classes of group participating policies may be excluded from the closed block.

(2) The plan shall establish one or more segregated accounts for the benefit of the closed block of business and shall allocate to those segregated accounts enough assets of the mutual company so that the assets together with the revenue from the closed block of business are sufficient to support the closed block, including, but not limited to, the payment of claims, expenses, taxes, and any dividends that are provided for under the terms of the participating policies, with appropriate adjustments in the dividends for experience changes. The plan shall be accompanied by an opinion of a qualified actuary or an appointed actuary who meets the standards set forth in the insurance laws or regulations for the submission or actuarial opinions as to the adequacy of reserves or assets. The opinion shall relate to the adequacy of the assets allocated to the segregated accounts in support of the closed block of business. The actuarial opinion shall be based on a method of analysis deemed appropriate for those purposes by the Actuarial Standards Board.

(3) The amount of assets allocated to the segregated accounts of the closed block shall be based upon the mutual company's last annual statement that is updated to the effective date of the conversion.

(4) The converted stock company shall keep a separate accounting for the closed block and shall make and include in the annual statement to be filed with the Commissioner each year a separate statement showing the gains, losses, and expenses properly attributable to the closed block.

(5) Periodically, upon the Commissioner's approval, those assets allocated to the closed block, as provided in paragraph (2) of this subsection, that are in excess of the amount of assets necessary to support the remaining policies in the closed block shall revert to the benefit of the converted stock company.

(6) The Commissioner may waive the requirement for the establishment of a closed block of business if the Commissioner deems it to be in the best interest of the participating policyholders of the mutual insurer to do so.

(l) The plan shall provide that any one person or group of persons acting in concert may not acquire, through public offering or subscription rights, more than 5% of the capital stock of the converted stock company for a period of 5 years from the effective date of the plan except with the approval of the Commissioner. This limitation does not apply to any entity that is to purchase 100% of the capital stock of the converted company as part of the plan of conversion approved by the Commissioner or to a purchase of stock by a tax-qualified employee benefit plan pursuant to subscription rights granted to



that plan as authorized under § 35-4207(b) and to a purchase of unsubscribed stock pursuant to subsection (h) of this section. (May 24, 1996, D.C. Law 11-126, § 7, 43 DCR 1551.)

**Section references.** — This section is referred to in §§ 35-4203, 35-4207, and 35-4213.

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4207. Optional provisions in a plan of conversion.

(a) The following provisions may be included in the plan:

(1) The plan may provide that the directors and officers of the mutual company shall receive, without payment, nontransferable subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan as provided in § 35-4205(e). Those subscription rights shall be allocated among the directors and officers by a fair and equitable formula.

(2) The total number of shares that may be purchased under subsection (a)(1) of this section may not exceed 85% of the total number of shares to be issued in the case of a mutual company with total assets of less than \$50 million, or 25% of the total shares to be issued in the case of a mutual company with total assets or more than \$500 million. For mutual companies with total assets between \$50 million and \$500 million, the total number of shares that may be purchased shall be interpolated.

(3) Stock purchased by a director or officer under subsection (a)(1) of this section shall not be sold within one year following the effective date of the conversion.

(4) The plan may also provide that a director or officer or person acting in concert with a director or officer of the mutual company may not acquire any capital stock of the converted stock company for 3 years after the effective date of the plan, except through a broker or dealer, without the permission of the Commissioner. That provision may not apply to prohibit the directors and officers from purchasing stock through subscription rights received in the plan under subsection (a)(1) of this section.

(b) The plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase up to 10% of the capital stock of the converted stock company, or the stock of another corporation that is participating in the conversion plan as provided in § 35-4206(e) and (f). The employee benefit plan shall be entitled to exercise its subscription rights regardless of the amount of shares purchased by other persons. (May 24, 1996, D.C. Law 11-126, § 8, 43 DCR 1551.)

**Section references.** — This section is referred to in § 35-4206.

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4208. Alternative plan of conversion.

The board of directors may adopt a plan of conversion that does not rely in whole or in part upon the issuance to members of nontransferable subscription rights to purchase stock of the converted stock company if the Commissioner

finds that the plan does not prejudice the interest of the members, is fair and equitable, and is based upon an independent appraisal of the market value of the mutual company by a qualified person and a fair and equitable allocation of any consideration to be given eligible members. The Commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the Commissioner's staff to assist in reviewing whether the plan may be approved by the Commissioner. (May 24, 1996, D.C. Law 11-126, § 9, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4209. Effective date of the plan.

A plan shall become effective when the Commissioner has approved the plan, the members have approved the plan, and the revised articles of incorporation have been filed. (May 24, 1996, D.C. Law 11-126, § 10, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4210. Rights of members whose policies are issued after adoption of the plan and before its effective date.

(a) All members whose policies are issued after the proposed plan has been adopted by the board of directors and before the effective date of the plan shall be given written notice of the plan of conversion. The notice shall specify the member's right to rescind that policy as provided in subsection (b) of this section within 45 days after the effective date of the plan. A copy of the plan or a summary of the plan shall accompany the notice. The form of the notice shall be filed with and approved by the Commissioner.

(b) Any member entitled to receive the notice described in subsection (a) of this section shall be entitled to rescind his or her policy and receive a full refund of any amounts paid for the policy or contract within 10 days after the receipt of the notice. (May 24, 1996, D.C. Law 11-126, § 11, 43 DCR 1551.)

**Section references.** — This section is referred to in §§ 35-4201 and 35-4203.

**Legislative history of Law 11-126.** — See note to § 35-4201.

### § 35-4211. Corporate existence.

(a) Upon the conversion of a mutual company to a converted stock company according to provisions of this chapter, the corporate existence of the mutual company shall be continued in the converted stock company. All the rights, franchises, and interest of the mutual company in and to every type of property, real, personal, and mixed, and things in action thereunto belonging, is deemed transferred to and vested in the converted stock company without any deed or transfer. Simultaneously, the converted stock company is deemed to have assumed all the obligations and liabilities of the mutual company.

(b) The directors and officers of the mutual company, unless otherwise specified in the plan of conversion, shall serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are duly elected pursuant to the articles of incorporation and bylaws of the converted stock company. (May 24, 1996, D.C. Law 11-126, § 12, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

## **§ 35-4212. Conflict of interest.**

No director, officer, agent, or employee of the mutual company, or any other person, shall receive any fee, commission, or other valuable consideration, other than his or her usual regular salary and compensation, for in any manner aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the Commissioner. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants, and actuaries for services performed in the independent practice of their professions, even if the attorney, accountant, or actuary is also a director of the mutual company. (May 24, 1996, D.C. Law 11-126, § 13, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

## **§ 35-4213. Costs and expenses.**

All the costs and expenses connected with a plan of conversion shall be paid for or reimbursed by the mutual company or the converted stock company except where the plan provides either for a holding company to acquire the stock of the converted stock company or for the merger of the mutual company into a stock insurance company as provided in § 35-4206(e). In those cases, the acquiring holding company or the stock insurance company shall pay for or reimburse all the costs and expenses connected with the plan. (May 24, 1996, D.C. Law 11-126, § 14, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

## **§ 35-4214. Failure to give notice.**

If the mutual company complies substantially and in good faith with the notice requirements of this chapter, the mutual company's failure to give any member or members any required notice does not impair the validity of any action taken under this chapter. (May 24, 1996, D.C. Law 11-126, § 15, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.



**§ 35-4215. Limitation of actions.**

Any action challenging the validity of or arising out of acts taken or proposed to be taken under this chapter shall be commenced within 30 days after the effective date of the plan. (May 24, 1996, D.C. Law 11-126, § 16, 43 DCR 1551.)

**Legislative history of Law 11-126.** — See note to § 35-4201.

## CHAPTER 43. REDOMESTICATION.

Sec.

35-4301. Definitions.

35-4302. Approval as a domestic insurer.

35-4303. Conversion to foreign insurer.

Sec.

35-4304. Effects of redomestication.

35-4305. Rulemaking.

**§ 35-4301. Definitions.**

For the purposes of this chapter, the term:

(1) "Commissioner" means the Commissioner of Insurance and Securities.

(1A) "District" means the District of Columbia.

(2) "Redomestication" means the transfer to the District the corporate domicile of an authorized foreign insurance company.

(3) Repealed.

(4) "Transferring insurer" means any authorized foreign insurance company seeking redomestication. (May 24, 1996, D.C. Law 11-127, § 2, 43 DCR 1559.)

**Legislative history of Law 11-127.** — Law 11-127, the "Insurance Redomestication Act of 1996," was introduced in Council and assigned Bill No. 11-390, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-234 and transmitted to both Houses of Congress for its review. D.C. Law 11-127 became effective on May 24, 1996.

**§ 35-4302. Approval as a domestic insurer.**

Any insurer which is organized under laws of any state and is admitted to do business in the District for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in the District. The domestic insurer shall be entitled to like certificates and licenses to transact business in the District, and shall be subject to the authority and jurisdiction of the District. (May 24, 1996, D.C. Law 11-127, § 3, 43 DCR 1559.)

**Legislative history of Law 11-127.** — See note to § 35-4301.

**§ 35-4303. Conversion to foreign insurer.**

Any domestic insurer may, upon the approval of the Commissioner of Insurance and Securities, transfer its domicile to any state in which it is admitted to transact the business of insurance, and upon such a transfer shall cease to be a domestic insurer and shall be admitted to the District, if qualified, as a foreign insurer. The Commissioner shall approve any proposed transfer unless he or she determines such a transfer is not in the best interest of the policyholders of the District. (May 24, 1996, D.C. Law 11-127, § 4, 43 DCR 1559.)

**Legislative history of Law 11-127.** — See note to § 35-4301.

### § 35-4304. Effects of redomestication.

(a) The certificate of authority, agent appointments and licenses, rates, and other items which the Commissioner allows, in his or her discretion, which are in existence at the time any insurer licensed to transact the business of insurance in the District transfers its corporate domicile to the District or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in the District. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the Commissioner.

(b) Every transferring insurer shall file new policy forms with the Commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the Commissioner.

(c) Every such transferring insurer shall notify the Commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the Commissioner. (May 24, 1996, D.C. Law 11-127, § 5, 43 DCR 1559.)

**Legislative history of Law 11-127.** — See note to § 35-4301.

### § 35-4305. Rulemaking.

The Mayor, pursuant to Subchapter I of Chapter 15 of Title 1, may issue rules and regulations to carry out the purpose of this chapter. (May 24, 1996, D.C. Law 11-127, § 6, 43 DCR 1559.)

**Legislative history of Law 11-127.** — See note to § 35-4301.



## CHAPTER 44. STATE OF ENTRY FOR NON-U.S. INSURERS.

Sec.

35-4401. Definitions.

35-4402. Authorization of entry.

35-4403. Maintenance of trust account.

35-4404. Requirements for trust agreement.

35-4405. Reporting requirements for U.S.  
Branches of non-U.S. insurers.

Sec.

35-4406. Additional requirements for U.S.  
Branch license.

35-4407. Authority of the Commissioner.

## § 35-4401. Definitions.

For the purposes of this chapter, the term:

(1) "Commissioner" means the Commissioner of Insurance and Securities.

(1A) "District" means the District of Columbia.

(2) "Non-U.S. insurer" means an insurer organized under the laws of a foreign country.

(3) Repealed.

(4) "United States Branch" or "U.S. Branch" means the business unit through which business is transacted within the United States by a non-U.S. insurer and the assets and liabilities of the insurer within the United States pertaining to such business. (May 24, 1996, D.C. Law 11-128, § 2, 43 DCR 1562.)

**Legislative history of Law 11-128.** — Law 11-128, the "Insurance State of Entry Act of 1996," was introduced in Council and assigned Bill No. 11-391, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-235 and transmitted to both Houses of Congress for its review. D.C. Law 11-128 became effective on May 24, 1996.

## § 35-4402. Authorization of entry.

(a) A non-U.S. insurer may use the District as a state of entry to transact insurance in the United States through a U.S. branch by:

(1) Qualifying as an insurer licensed to do business in the District; and

(2) Establishing a trust account, pursuant to a trust agreement approved by the Commissioner, with a U.S. bank approved by the Commissioner in an amount at least equal to the minimum capital and surplus required to be maintained by a domestic insurer licensed to do the same kind of insurance.

(b) Before authorizing the entry through the District of a U.S. branch of any non-U.S. insurer, the Commissioner shall require the non-U.S. insurer, in addition to the requirements of § 35-4404 and any other requirement of the insurance law, to submit:

(1) A copy of its charter and by-laws, if any, currently in force, and such other documents necessary to show the kinds of business which it is empowered to do in its domiciliary jurisdiction, attested to as accurate and complete by the insurance supervisory official in its home jurisdiction, and a full statement, subscribed and affirmed as true under the penalties of perjury by 2 officers or equivalent responsible representatives in such manner as the Commissioner shall prescribe, of its financial conditions as of the close of its latest fiscal year, showing its assets, liabilities, income disbursements, busi-

ness transacted, and other facts required to be shown in its annual statement, as reported to the insurance supervisory official in its home jurisdiction, and an English language translation, as necessary, of any of the documents required herein; and

(2) To an examination of the insurer's affairs at its principal office within the United States. However, the Commissioner may instead accept a report of the insurance supervisory official of the insurer's home jurisdiction. (May 24, 1996, D.C. Law 11-128, § 3, 43 DCR 1562.)

**Legislative history of Law 11-128.** — See note to § 35-4401.

### § 35-4403. Maintenance of trust account.

The assets in the trust account shall be known as trustee assets and shall at all times be in an amount equal to the U.S. branch's reserves and other liabilities plus the minimum capital and surplus required to be maintained by a domestic insurer licensed to do the same kind of insurance. (May 24, 1996, D.C. Law 11-128, § 4, 43 DCR 1562.)

**Section references.** — This section is referred to in § 35-4404.

**Legislative history of Law 11-128.** — See note to § 35-4401.

### § 35-4404. Requirements for trust agreement.

(a) The deed of trust and all amendments thereto shall be authenticated in such form and manner as the Commissioner may prescribe and shall not be effective unless approved by the Commissioner upon a finding that:

(1) A deed of trust or its amendments are sufficient in form and in conformity with law;

(2) The trustee or trustees are eligible as such; and

(3) The deed of trust is adequate to protect the interest of the beneficiaries of the trust.

(b) If at any time the Commissioner finds, after reasonable notice and hearing, that the requisites for the approval no longer exist, the Commissioner may withdraw approval.

(c) The Commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the Commissioner's judgement are not prejudicial to the interest of the people of the District or the United States policyholders and creditors of the U.S. Branch.

(d) The deed of trust shall contain provisions which:

(1) Vest legal title to trustee assets in the trustees and their successors lawfully appointed;

(2) Require that all assets deposited in the trust shall be continuously kept within the United States;

(3) Provide for substitution of a new trustee or trustees in case of a vacancy by death, resignation, or otherwise, subject to the approval of the Commissioner;

(4) Require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of such fund;

(5) Require that the trustee assets shall consist of cash or investments eligible for investment of the funds of domestic insurers and accrued interest thereon if collectable by the trustee;

(6) Require that the trust shall be for the exclusive benefit, security, and protection of the policyholders, or policyholders and creditors, of the U.S. Branch in the United States and that it shall be maintained as long as there is outstanding any liability of the non-U.S. insurer arising out of its insurance transactions in the United States; and

(7) Provide, in substance, that no withdrawals of assets, other than income as specified in subsection (e) of this section shall be made or permitted by the trustee or trustees without the approval of the Commissioner except to:

(A) Make deposits required by law in any state for the security or benefit of all policyholders, or policyholders and creditors, of the U.S. Branch in the United States;

(B) Substitute other assets permitted by law and at least equal in value and quality to those withdrawn upon the specific written direction of the United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(C) Transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(e) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States manager of the U.S. branch upon request, provided that the total trustee assets shall not thereby be less than the amount required to be maintained pursuant to § 35-4403.

(f) Upon withdrawal of trustee assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the deed of trust requires similar written approval of the insurance supervising official of that state in lieu of approval of the Commissioner provided that the total trustee assets shall not thereby be less than the amount required to be maintained pursuant to § 35-4403. In all such cases, the U.S. Branch shall notify the Commissioner in writing of the nature and extent of the withdrawal.

(g) The Commissioner may from time to time:

(1) Make examinations of the trustee assets of any authorized U.S. Branch at the insurer's expense; and

(2) Require the trustee or trustees to file a statement, in such form as the Commissioner may prescribe, certifying the assets of the trust fund and the amounts thereof.

(h) Refusal or neglect of any trustee to comply with the requirements of this section shall be grounds for the revocation of the insurer's license or the liquidation of its United States Branch. (May 24, 1996, D.C. Law 11-128, § 5, 43 DCR 1562.)

**Section references.** — This section is referred to in §§ 35-4402 and 35-4405.

**Legislative history of Law 11-128.** — See note to § 35-4401.



**§ 35-4405. Reporting requirements for U.S. Branches of non-U.S. insurers.**

(a) In addition to other requirements of this chapter, every authorized U.S. Branch shall, not later than the first day of March in each year and 45 days after the end of each of the first 3 calendar-year quarters, file the following with the Commissioner and with the National Association of Insurance Commissioners ("NAIC"):

(1) Annual and quarterly statements of the business transacted within the United States and the assets held by or for it within the United States for the protection of policy holders and creditors within the United States, and of the liabilities incurred against such assets. The forms shall not contain any statement in regard to its assets and business elsewhere. The statements shall be in the same format required of an insurer domiciled in the United States Branch's state of entry state and licensed to write the same kinds of insurance; and

(2) A statement of trusted surplus, in such form as the Commissioner may prescribe, as of the end of the same period covered by the statement filed pursuant to paragraph (1) of this subsection. The aggregate value of the insurer's general state deposits and trusted assets deposited with a trustee in compliance with § 35-4404, plus accrued investment income thereon where such interest is collected by the states for trustees, less the aggregate net amount of all of its reserves and other liabilities in the United States as determined in accordance with this section, shall be known as its trusted surplus in the United States. In determining the net amount of the U.S. Branch's liabilities in the United States to be reported in the statement of trusted surplus, the U.S. Branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statements as follows:

(A) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement; and

(B) Deduct:

(i) Unearned premiums on agent's balances or uncollected premiums not more than 90 days past due;

(ii) Reinsurance on losses with authorized insurer's, less unpaid reinsurance premiums;

(iii) Reinsurance recoverable on paid losses from unauthorized insurers that are included as an asset in the annual statement, but only to the extent a liability for such unauthorized recoverables is included in the liabilities report in the trusted surplus statement;

(iv) Special state deposits held for the exclusive benefit of policyholders, or policyholders and creditors, of any particular state not exceeding net liabilities reports for that state;

(v) Secured accrued retrospective premiums;

(vi) If a life insurer, the amount of its policy loans to policyholders within the United States, not exceeding the amount of legal reserve required on each such policy, and the net amount of uncollected and deferred premiums; and

(vii) Any other nontrusted asset which the Commissioner determines secures liabilities in a substantially similar manner; and

(3) Any additional information that the Commissioner may require relating to the total business or assets, or any portion thereof, of the non-U.S. insurer.

(b) The annual statement and trusted surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager of the U.S. Branch. The items of securities and other property held under trust deeds shall be certified in the trusted surplus statement by the United States trustee or trustees.

(c) Every report on examination of a U.S. Branch shall include a trusted surplus statement as of the date of examination in addition to the general statement of the financial condition of the U.S. Branch. (May 24, 1996, D.C. Law 11-128, § 6, 43 DCR 1562.)

**Legislative history of Law 11-128.** — See note to § 35-4401.

### **§ 35-4406. Additional requirements for U.S. Branch license.**

(a) Before issuing any new or renewal license to any U.S. Branch, the Commissioner may require satisfactory proof, either in the non-U.S. insurer's charter or by an agreement evidenced by a duly certified resolution of its board of directors, or otherwise as the Commissioner may require, that the insurer will not engage in any insurance business in contravention of the provisions of this chapter or not authorized by its charter.

(b) The Commissioner shall issue a renewal license to any U.S. Branch if satisfied, by such proof as required, that the insurer is not delinquent with respect to any requirement imposed by this chapter and that its continuance in business in the District will not be hazardous or prejudicial to the best interest of the people of the District.

(c) No U.S. Branch shall be licensed to do in the District any kind of insurance business, or any combination of kinds of insurance business, which are not permitted to be done by domestic insurers licensed under the provisions of this chapter. No U.S. Branch shall be authorized to do an insurance business in the District if it does anywhere within the United States any kind of business other than an insurance business and the business necessarily or properly incidental to the kinds of insurance business which it is authorized to do in the District.

(d) Except as otherwise specifically provided, no U.S. Branch, entering through the District or another state, shall be or continue to be authorized to do an insurance business in the District if it fails to comply substantially with any requirement or limitation of this chapter applicable to similar domestic insurers hereafter organized, which in the judgement of the Commissioner is reasonably necessary to protect the interest of the policyholders.

(e) No U.S. Branch that does outside of the District any kind or combination of kinds of insurance business not permitted to be done in the District by

similar domestic insurers hereafter organized shall be or continue to be authorized to do an insurance business in the District, unless in the judgement of the Commissioner the doing of such kind or combination of kinds of insurance business will not be prejudicial to the best interest of the people of the District.

(f) No U.S. Branch shall be, or continue to be, authorized to do an insurance business in the District if it fails to keep full and correct entries of its transactions, which shall at all times be open to the inspection of persons invested by law with the rights of inspection and be maintained in its principal office within the District. (May 24, 1996, D.C. Law 11-128, § 7, 43 DCR 1562.)

**Legislative history of Law 11-128.** — See note to § 35-4401.

### § 35-4407. Authority of the Commissioner.

Whenever it appears to the Commissioner from any annual or quarterly statement, trustee surplus statement, or any other report that a U.S. Branch's trustee surplus is reduced below minimum capital and surplus required to be maintained by a domestic insurer licensed to transact the same kinds of insurance, the Commissioner may proceed against the insurer pursuant to the provisions of District law as an insurer whose condition is such that its further transaction of business in the United States will be hazardous to its policyholders, its creditors, or the public in the United States. (May 24, 1996, D.C. Law 11-128, § 8, 43 DCR 1562.)

**Legislative history of Law 11-128.** — See note to § 35-4401.



## CHAPTER 45. HEALTH MAINTENANCE ORGANIZATIONS.

Sec.

- 35-4501. Definitions.
- 35-4502. Establishment of health maintenance organizations.
- 35-4503. Issuance of certificate of authority.
- 35-4504. Powers of health maintenance organizations.
- 35-4505. Fiduciary responsibilities.
- 35-4506. Quality assurance program.
- 35-4507. Requirements for group contract, individual contract, and evidence of coverage.
- 35-4508. Annual report.
- 35-4509. Information to enrollees.
- 35-4510. Grievance procedures.
- 35-4511. Investments.
- 35-4512. Protection against insolvency.
- 35-4513. Uncovered expenditures insolvency deposit.
- 35-4514. Enrollment period; replacement coverage in the event of insolvency.
- 35-4515. Filing requirements for rating information.
- 35-4516. Regulation of health maintenance organization producers.

Sec.

- 35-4517. Powers of insurance corporations.
- 35-4518. Examinations.
- 35-4519. Suspension or revocation of certificate of authority.
- 35-4520. Rehabilitation, liquidation, or conservation of health maintenance organizations.
- 35-4521. Summary orders and supervision.
- 35-4522. Regulations.
- 35-4523. Penalties and enforcement.
- 35-4524. Statutory construction and relationship to other laws.
- 35-4525. Filings and reports as public documents.
- 35-4526. Confidentiality of medical information and limitation of liability.
- 35-4527. Acquisition of control of or merger of a health maintenance organization.
- 35-4528. Coordination of benefits.
- 35-4529. Point of service plan.
- 35-4530. Insolvency protection; assessment.

## § 35-4501. Definitions.

For the purposes of this chapter, the term:

(1) “Administrative services provider contract” means a contract entered into between a health maintenance organization and a contracting provider in which the contracting provider accepts payments for certain covered services provided to the enrollees of the health maintenance organization by external providers, and the contracting provider pays the external providers pursuant to a contract between the contracting provider and the health maintenance organization.

(2) “Agent” means a person who solicits, negotiates, effects, procures, delivers, renews, or continues a contract for health maintenance organization membership, other than for himself, or a person who advertises or otherwise holds himself out to the public as such. Health maintenance organization agents shall not include salaried employees and officers of the HMO or its parents, subsidiaries or other corporations under common control with the HMO, whose principal duties do not include the negotiation or solicitation of enrollee contracts.

(3) “Basic health care services” means preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory and diagnostic and therapeutic radiological services, and services mandated under Chapter 23 of this title, Chapter 11 of this title, and Chapter 24 of this title.

(4) “Capitated basis” means fixed per member per month payment or percentage of dues payment wherein the provider or an affiliation of providers assumes the full risk for the cost of contracted services without regard to the

type, value, or frequency of services provided. For the purposes of this definition, the term "capitated basis" includes the cost associated with operating staff or group model facilities.

(5) "Carrier" means a health maintenance organization, a licensed insurer, Group Hospitalization and Medical Services, Inc., or other entity responsible for payment of benefits or provision of services under a group or individual contract.

(6) "Commissioner" means the Commissioner of Insurance and Securities.

(7) "Contracting provider" means a physician or other health care provider who enters into an administrative service provider contract with a health maintenance organization.

(8) "Copayment" means either a dollar or percentage amount an enrollee must pay in order to receive a specific covered service which is not fully prepaid.

(9) "Covered services" means health care services included in the health maintenance organization's evidence of coverage in accordance with the terms of the health maintenance organization's group or individual contract.

(10) "Deductible" means the amount an enrollee is responsible to pay out-of-pocket before the health maintenance organization begins to pay the costs associated with treatment.

(11) "Director" means the Director of the Department of Health, established by Reorganization Plan No. 4 of 1996.

(12) "District" means the District of Columbia.

(13) "Enrollee" means an individual who is covered by a health maintenance organization.

(14) "Enrollment fees" means the payment charged by the health maintenance organization which shall be paid by an enrollee or by a group on behalf of enrollees for coverage in the health maintenance organization.

(15) "Evidence of coverage" means a statement of the essential features and covered services of the health maintenance organization which is given to the enrollee by the health maintenance organization or by the group contract holder.

(16) "Extension of benefits" means the continuation of coverage under a particular benefit provided under a contract following termination with respect to an enrollee who is hospitalized on the date of termination.

(17) "External provider" means a health care provider, including a physician or hospital, that is not a contracting provider, or an employee, shareholder, or partner of a contracting provider.

(18) "Grievance" means a written complaint which has been submitted in accordance with the health maintenance organization's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the health maintenance organization relative to the enrollee.

(19) "Group contract" means a contract issued and delivered in the District for health care services which by its terms limits eligibility to members of a specified group. The group contract may include coverage for dependents.

(20) "Group contract holder" means the person to which the group contract has been issued.

(21) "Health maintenance organization" or "HMO" means any person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for copayments and deductibles.

(22) "Health maintenance organization producers" means any person who solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for HMO membership or who takes or transmits a membership fee or premium for such a policy or contract, other than for himself, or a person who advertises or otherwise holds himself out to the public as such.

(23) "Hold harmless" means an expressed or implied arrangement between a provider and a health maintenance organization by which the provider, or any representative of the provider, agrees not to collect or attempt to collect from any enrollee any money owed to the provider by the health maintenance organization or by a contracting provider, except for copayments and deductibles owed by the enrollee, or any payment or charges for health care services not covered under the evidence of coverage.

(24) "Individual contract" means a contract delivered in the District for health care services issued to and covering an individual enrollee. The individual contract may include dependents of the enrollee.

(25) "Insolvent" or "insolvency" means that the organization has been declared bankrupt and placed under an order of liquidation by a court of competent jurisdiction.

(26) "Mayor" means the Mayor of the District of Columbia.

(27) "Net worth" means the excess of total admitted assets over total liabilities, but the liabilities shall not include fully subordinated debt.

(28) "Participating provider" means a provider who, under an express or implied contract with a health maintenance organization or with its contractor or subcontractor, has agreed to provide covered services to enrollees with an expectation of receiving payment, other than copayment or deductible, directly or indirectly from the health maintenance organization.

(29) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

(30) "Point of service plan" means a delivery system that permits an enrollee of a health maintenance organization to receive services outside the provider panel of the health maintenance organization under the terms and conditions of the enrollee's contract with the health maintenance organization.

(31) "Primary care provider" means a participating provider who the enrollee has selected or who has otherwise been assigned responsibility for the coordination of covered services to the enrollee.

(32) "Provider" means any hospital or health professional licensed or authorized by reciprocity or endorsement to practice a health occupation by the District pursuant to Chapter 33 of Title 2, or any state.

(33) "Provider panel" means a group of providers that have entered into a written provider service contract with an HMO to provide services under the HMO's health benefit plan.

(34) "Replacement coverage" means the benefits provided by a succeeding carrier after termination of a member's enrollment with the preceding carrier.



(35) "Uncovered expenditures" means the cost to the health maintenance organization for covered services that are the obligation of the health maintenance organization for which an enrollee may also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made that are acceptable to the Commissioner. (Apr. 9, 1997, D.C. Law 11-235, § 2, 44 DCR 818.)

**Legislative history of Law 11-235.** — Law 11-235, the "Health Maintenance Organization Act of 1996," was introduced in Council and assigned Bill No. 11-442, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-495 and transmitted to both Houses of Congress for its review. D.C. Law 11-235 became effective on April 9, 1997.

## § 35-4502. Establishment of health maintenance organizations.

(a) Any person may apply to the Commissioner for a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. No person shall establish or operate a health maintenance organization in the District without obtaining a certificate of authority under this chapter, except as provided for herein. All health maintenance organizations shall, as a condition of certification, agree to accept the risk for the provision of services rendered to enrollees on a prepaid basis except for enrollee responsibility for copayments or deductibles, or both.

(b) A foreign corporation may qualify under this chapter subject to its registration to do business pursuant to this section and compliance with all provisions of this chapter and other applicable District laws.

(c) All health maintenance organizations operating as health maintenance organizations in the District shall submit an application for a certificate of authority under subsection (d) of this section within 120 days after April 9, 1997. Each applicant may continue to operate until the Commissioner acts upon the application. In the event that an application is denied pursuant to § 35-4503, the applicant shall thereafter be treated as a health maintenance organization whose certificate of authority has been revoked. Notwithstanding a revocation under this chapter, any contracts issued to groups or individuals residing in the District shall remain in effect with respect to a health maintenance organization which has a valid certificate of authority issued by the Maryland Insurance Division or Virginia Bureau of Insurance until the next renewal date or anniversary date of coverage of such contracts, or 120 days from the date the application is denied, whichever date shall occur later.

(d) Each application for a certificate of authority shall be accompanied by a filing fee of \$500, which shall be deposited in the Insurance Regulatory Trust Fund established by § 35-2702, and shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Commissioner, and shall set forth or be accompanied by the following:

(1) A copy of the organizational documents of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) A list of the names, addresses, and official positions and biographical information, on forms acceptable to the Commissioner, of the persons who are to be responsible for the conduct of the affairs and day-to-day operations of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, and the principal officers in the case of a corporation, or the partners or members in the case of partnership or association;

(4) A sample of any contract form made, or to be made, between any class of providers and the health maintenance organization and a copy of any contract form made, or to be made, between third party administrators, marketing consultants, or persons listed in paragraph (3) of this subsection and the health maintenance organization;

(5) A copy of the form of evidence of coverage to be issued to the enrollees;

(6) A copy of the form of group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(7) Financial statements showing the applicant's assets, liabilities, and sources of financial support, including both a copy of the applicant's most recent certified financial statement and an unaudited current financial statement;

(8)(A) A financial feasibility plan which includes detailed enrollment projections, the methodology for determining dues to be charged during the first 12 months of operations certified by an actuary, a projection of balance sheets, cash flow statements showing any capital expenditures, purchase and sale of investments and deposits with the District, and income and expense statements anticipated from the start of operations until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other sources of funding.

(B) The requirement of submitting a financial feasibility plan shall not apply to any person that holds an unencumbered certificate of authority to operate a health maintenance organization in Maryland or Virginia.

(9) A power of attorney duly executed by the applicant, if not domiciled in the District, appointing the Commissioner, or his or her successors in office, and duly authorized deputies, as the true and lawful attorney of the applicant in and for the District upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in the District may be served;

(10) A statement or map reasonably describing the geographical area or areas to be served;

(11) A description of the internal grievance procedures to be utilized for the investigation and resolution of enrollee complaints and grievances;

(12) A description of the proposed quality assurance program, including the formal organizational structure, methods for developing criteria, procedures for comprehensive evaluation of the quality of care rendered to enrollees, and processes to initiate corrective action and reevaluation when deficiencies in provider or organizational performance are identified;

(13) A description of the procedures to be implemented to meet the protection against insolvency requirements in § 35-4512;

(14) A list of the names, addresses, and license numbers of all providers with which the health maintenance organizations has agreements;

(15) The method of determining the situs of each group contract; and

(16) Such other information as the Commissioner may require to make the determinations required in § 35-4503.

(e)(1) The Commissioner may issue rules and regulations necessary for the proper administration of this chapter to require a health maintenance organization, subsequent to receiving its certificate of authority, to submit the information, modification, or amendments to the items described in subsection (d) of this section to the Commissioner, either for the Commissioner's approval or for information only, prior to the effectuation of the modification or amendment, or to require the health maintenance organization to indicate the modifications to the Commissioner at the time of the next succeeding site visit or examination.

(2) Any modification or amendment for which the Commissioner's approval is required shall be deemed approved unless disapproved within 30 days, provided that the Commissioner may postpone the action for such additional time, not to exceed 30 days, as necessary for proper consideration. (Apr. 9, 1997, D.C. Law 11-235, § 3, 44 DCR 818.)

**Section references.** — This section is referred to in § 35-4512.

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4503. Issuance of certificate of authority.

(a) Upon receipt of an application for issuance of a certificate of authority, the Commissioner, in consultation with the Director of the Department of Health, shall determine whether the applicant, with respect to the health care services to be provided, has complied with § 35-4506.

(b) Within 45 days of receipt of the application for issuance of a certificate of authority, the Commissioner, in consultation with the Director of the Department of Health, shall certify that the proposed health maintenance organization meets the requirements of § 35-4506 or notify the applicant that it does not meet such requirements and specify in what respects it is deficient.

(c) The Commissioner shall issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and upon the Commissioner being satisfied that:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and possess good reputations;

(2) Any deficiencies identified by the Commissioner have been corrected and the health maintenance organization's proposed plan of operation meets the requirements of § 35-4506;

(3) The health maintenance organization will effectively provide or arrange for basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles, or both; and



(4) The health maintenance organization is in compliance with §§ 35-4512 and 35-4514.

(d) A certificate of authority may be denied only after the Commissioner complies with the requirements of § 35-4519.

(e) The Commissioner, in carrying out his obligations under this chapter, may contract with qualified persons to make recommendations concerning the determinations required to be made by him. Recommendations may be accepted in full or in part by the Commissioner. (Apr. 9, 1997, D.C. Law 11-235, § 4, 44 DCR 818.)

**Section references.** — This section is referred to in §§ 35-4502 and 35-4519.

**Legislative history of Law 11-235.** — See note to § 35-4501.

## **§ 35-4504. Powers of health maintenance organizations.**

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property and equipment as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization;

(2) Transactions between affiliated entities, including loans and the transfer of responsibility under all contracts (provider, enrollee, etc.) between affiliates or between the health maintenance organization and its parent;

(3) The furnishing of health care services through providers, provider associations, or agents for providers which are under contract with or employed by the health maintenance organization;

(4) The contracting with any person for the performance on its behalf of certain functions, such as marketing, enrollment, and administration;

(5) The contracting with an insurance company, including Group Hospitalization and Medical Service, Inc., licensed in the District for the provision of insurance, indemnity, or reimbursement against the cost of covered services provided by the health maintenance organization or with optometry services, podiatry services, dental services, pharmaceutical service plans, and other entities authorized to do business in the District for the provision of supplemental health services;

(6) The joint marketing of products with an insurance company authorized to do business in the District as long as the company that is offering each product is clearly identified; and

(7) Entering into administrative service provider contracts with contracting providers whereby covered services are rendered to enrollees by external providers who have entered into contracts with the contracting provider.

(b) A health maintenance organization shall file notice, with adequate supporting information, with the Commissioner prior to the exercise of any power granted in subsection (a)(1), (2), or (4) of this section which may affect the financial soundness of the health maintenance organization. The Commissioner shall disapprove such exercise of power only if the Commissioner

determines it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the Commissioner does not disapprove within 30 days of the filing of the notice, the exercise of power shall be deemed approved.

(c) The Commissioner may issue rules and regulations exempting those activities having a de minimis effect from the filing requirement of this subsection. (Apr. 9, 1997, D.C. Law 11-235, § 5, 44 DCR 818.)

**Section references.** — This section is referred to in § 35-4510.

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4505. Fiduciary responsibilities.

(a) Any director, officer, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the organization.

(b) A health maintenance organization shall maintain in force a fidelity bond or fidelity insurance on such employees and officers, directors, and partners in an amount not less than \$250,000 and not more than \$5,000,000. (Apr. 9, 1997, D.C. Law 11-235, § 6, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4506. Quality assurance program.

(a) A health maintenance organization shall establish procedures to assure that the health care services provided to enrollees shall be rendered under reasonable standards of quality of care consistent with prevailing professionally recognized standards of medical practice. Such procedures shall include mechanisms to assure availability, accessibility, and continuity of care.

(b) A health maintenance organization shall have an ongoing internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services, across all institutional and noninstitutional settings. The program shall include, at a minimum, the following:

(1) A written statement of goals and objectives which emphasizes improved health status in evaluating the quality of care rendered to enrollees;

(2) A written quality assurance plan which describes the following:

(A) The health maintenance organization's scope and purpose in quality assurance;

(B) The organizational structure responsible for quality assurance activities;

(C) Contractual arrangements, where appropriate, for delegation of quality assurance activities;

(D) Confidentiality policies and procedures;

(E) A system of ongoing evaluation activities;

(F) A system of focused evaluation activities;

(G) A system for credentialing providers and performing peer review activities; and

(H) Duties and responsibilities of the designated physician responsible for the quality assurance activities;

(3) A written statement describing the system on ongoing quality assurance activities including:

(A) Problem assessment, identification, selection, and study;

(B) Corrective action, monitoring, evaluation, and reassessment; and

(C) Interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(4) A written statement describing the system focused quality assurance activities based on representative samples of the enrolled population which identifies method of topic selection, study, data collection, analysis, interpretation, and report format; and

(5) Written plans for taking appropriate corrective action whenever, as determined by the quality assurance program, inappropriate or substandard services have been provided or services which should have been provided have not been provided.

(c) The organization shall record proceedings of formal quality assurance program activities and maintain documentation in a confidential manner. Quality assurance program minutes shall be available to the Commissioner.

(d) The organization shall ensure the use and maintenance of an adequate patient record system which will facilitate documentation and retrieval of clinical information for the purpose of the health maintenance organization evaluating continuity and coordination of patient care and assessing the quality of health and medical care provided to enrollees.

(e) Enrollee clinical records shall be available to the Commissioner or an authorized designee for examination and review to ascertain compliance with this section, or as deemed necessary by the Commissioner.

(f) The organization shall establish a mechanism for periodic reporting of quality assurance program activities to the governing body, providers, and appropriate staff.

(g) If a quality assurance program has received approval in Maryland or Virginia, or if a quality assurance program has been approved by the D.C. Medicaid Program, it shall be deemed approved.

(h) The following shall apply to health maintenance organizations, carriers, and providers:

(1) No contract between a health maintenance organization and a provider shall prohibit, impede, or interfere in the discussions between a patient and a provider of medical treatment option including discussions regarding financial coverage of those treatment options.

(2) A contract between a carrier and a provider shall permit and require the provider to discuss medical treatment options with the patient.

(3) A health maintenance organization may not terminate or refuse to contract with a provider solely because the provider discussed medical treatment options with an enrollee. (Apr. 9, 1997, D.C. Law 11-235, § 7, 44 DCR 818.)



**Section references.** — This section is referred to in §§ 35-4503 and 35-4526.

**Legislative history of Law 11-235.** — See note to § 35-4501.

**§ 35-4507. Requirements for group contract, individual contract, and evidence of coverage.**

(a) Every group and individual contract holder is entitled to a group or individual contract.

(1) The contract shall not contain provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, or which encourage misrepresentation.

(2) The contract shall contain a clear statement of the following:

- (A) Name and address of the health maintenance organization;
- (B) Eligibility requirements;
- (C) Covered services within the service area;
- (D) Covered emergency care benefits and services;
- (E) Out of area covered benefits and services, if any;
- (F) Copayments, deductibles, or other out-of-pocket expenses;
- (G) Limitations and exclusions;
- (H) Enrollee termination;
- (I) Enrollee reinstatement, if any;
- (J) Claims procedures;
- (K) Enrollee grievance procedures;
- (L) Continuation of coverage, if any;
- (M) Conversion;
- (N) Extension of benefits if any;
- (O) Coordination of benefits, if applicable;
- (P) Subrogation, if any;
- (Q) Description of the service area;
- (R) Entire contract provision;
- (S) Term of coverage;
- (T) Cancellation of group or individual contract holder;
- (U) Renewal;
- (V) Reinstatement of group or individual contract holder, if any;
- (W) Grace period;
- (X) Conformity with District of Columbia law; and
- (Y) Payment provisions.

(3) An evidence of coverage may be filed as part of the group contract to describe the provisions required in paragraph (2)(A) through (Q) of this subsection.

(b) In addition to the requirements of subsection (a)(2)(A) through (Y) of this section, an individual contract shall provide for a 10-day period to examine and return the contract and have the dues refunded. If services were received during the 10-day period and the person returns the contract to receive a refund of the dues paid, the person must pay for such services.

(c) Every enrollee shall receive an evidence of coverage from the group contract holder or the health maintenance organization.

(1) The evidence of coverage shall not contain provisions or statements which are unfair, unjust, inequitable, misleading, or deceptive.

(2) The evidence of coverage shall contain a clear statement of the requirements in subsection (a)(2)(A) through (Q) of this section.

(d) The Commissioner may adopt regulations establishing readability standards for individual contract, group contract, and evidence of coverage forms.

(e) No group or individual contract, evidence of coverage, or amendment thereto shall be delivered or issued for delivery in the District unless its form has been filed with and approved by the Commissioner pursuant to subsections (f) and (g) of this section.

(f) If an evidence of coverage issued pursuant to a contract issued in the District is intended for delivery in the District, the evidence of coverage must be submitted to and approved by the Commissioner in accordance with subsection (g) of this section.

(1) If an evidence of coverage issued pursuant to a contract issued in Virginia or Maryland is intended for delivery in the District, the evidence of coverage shall be deemed approved if it has been filed and approved by the appropriate regulatory authority of Virginia or Maryland, as applicable.

(2) If an evidence of coverage issued pursuant to a contract issued in another state, excepting Virginia and Maryland as described in paragraph (1) of this subsection, is intended for delivery in the District, the evidence of coverage must be submitted to and approved by the Commissioner in accordance with subsection (g) of this section.

(g) Every form required by this section shall be filed with the Commissioner not less than 30 days prior to delivery or issue for delivery in the District. At any time during the initial 30-day period, the Commissioner may extend the period for review for an additional 30 days. Notice of an extension shall be in writing. At the end of the review period, the form is deemed approved if the Commissioner has taken no action. The filer shall notify the Commissioner in writing prior to using a form that is deemed approved.

(1) At any time, after 30-days notice and for cause shown, the Commissioner may withdraw approval of any form effective at the end of the 30 days if the form would violate a statute or regulation of the District. For group and individual contracts and evidence of coverages which have already been issued and delivered, the effective date shall not occur until the next anniversary date of the group or individual contract unless the Commissioner requires that the effective date shall be earlier. In such case, the health maintenance organization may revise its dues and other terms contained in the contract or evidence of coverage to reflect any changes required as a result of the Commissioner's withdrawal of approval.

(2) When a filing is disapproved or approval of a form is withdrawn, the Commissioner shall give the health maintenance organization written notice of the reasons for disapproval and in the notice shall inform the health maintenance organization that within 30 days of receipt of the notice the health maintenance organization may request a hearing. A hearing will be conducted within 30 days after the Commissioner has received the request for a hearing.

(h) The Commissioner may require the submission of any relevant information the Commissioner deems necessary in determining whether to approve or

disapprove a filing made pursuant to this section. (Apr. 9, 1997, D.C. Law 11-235, § 8, 44 DCR 818.)

**Section references.** — This section is referred to in § 35-4519.

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4508. Annual report.

(a) Every health maintenance organization shall annually, on or before the first day of March, file a report verified by at least 2 principal officers with the Commissioner covering the preceding calendar year. The reports shall be on forms prescribed by the Commissioner. In addition, a health maintenance organization shall file with the Commissioner, unless otherwise stated:

(1) Audited financial statements on or before June 1;

(2) A list of the providers who have executed a contract that complies with § 35-4512(d)(1); and

(3) A description of any changes to the grievance procedures and the total number of grievances initiated by District group and individual contract enrollees handled through such procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.

(b) The Commissioner may require such additional reports as he deems necessary and appropriate to enable the Commissioner to implement this chapter. (Apr. 9, 1997, D.C. Law 11-235, § 9, 44 DCR 818.)

**Section references.** — This section is referred to in § 35-4525.

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4509. Information to enrollees.

(a) A health maintenance organization shall provide to its enrollees a list of providers, upon enrollment and re-enrollment.

(b) Every health maintenance organization shall provide to its enrollees within 30 days notice of any material change in the operation of the organization that will affect them directly.

(c) An enrollee must be notified in writing by a health maintenance organization of the termination of the primary care provider who provided health care services to that enrollee. A health maintenance organization shall provide assistance to the enrollee in transferring to another participating primary care provider.

(d) A health maintenance organization shall provide to enrollees information on how services may be obtained, where additional information on access to services can be obtained, and a number where the enrollee can contact the HMO at no cost to the enrollee. (Apr. 9, 1997, D.C. Law 11-235, § 10, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.



### § 35-4510. Grievance procedures.

(a) Every health maintenance organization shall establish and maintain a grievance procedure which has been approved by the Commissioner to provide procedures for the resolution of grievances initiated by enrollees. A health maintenance organization shall maintain records regarding grievances received since the date of its last examination of such grievances.

(b) The Commissioner may examine grievance procedures. (Apr. 9, 1997, D.C. Law 11-235, § 11, 44 DCR 818.)

**Section references.** — This section is referred to in § 35-4519.

**Legislative history of Law 11-235.** — See note to § 35-4501.

### § 35-4511. Investments.

With the exception of investments made in accordance with § 35-4504(a)(1), the funds of a health maintenance organization shall be invested in accordance with NAIC Health Maintenance Organization Investment Guidelines adopted by the Commissioner. (Apr. 9, 1997, D.C. Law 11-235, § 12, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### § 35-4512. Protection against insolvency.

(a) *Net worth requirements.* — (1) Before issuing any certificates of authority, the Commissioner shall require that the health maintenance organization have an initial net worth of \$1,500,000 and shall thereafter maintain the minimum net worth required by paragraph (2) of this subsection.

(2) Except as provided in paragraphs (3) and (4) of this subsection, every health maintenance organizations must maintain a minimum net worth equal to the greater of:

(A) \$1,000,000;

(B) Two percent of annual dues revenues as reported on the most recent annual financial statement filed with the Commissioner on the first \$150,000,000 of dues and 1% of annual dues on the dues in excess of \$150,000,000;

(C) An amount equal to the sum of 3 months uncovered health care expenditures as reported on the most recent financial statement filed with the Commissioner; or

(D) An amount equal to the sum of:

(i) Eight percent of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis as reported on the most recent financial statement filed with the Commissioner; and

(ii) Four percent of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the Commissioner.

(3) A health maintenance organization meeting the exemption of § 35-4502(d)(8)(A) before April 9, 1997, and any HMO that does not meet the requirements of this section on April 9, 1997, act or within 12 months

of April 9, 1997, must meet and maintain the following annual minimum net worth standards.

(A) Twenty-five percent of the amount otherwise required by this section by the end of the first full calendar year following April 9, 1997;

(B) Fifty percent of the amount otherwise required by this section by the end of the second full calendar year following April 9, 1997;

(C) Seventy-five percent of the amount otherwise required by this section by the end of the third full calendar year following April 9, 1997; and

(D) One hundred percent of the amount otherwise required by this section by the end of the fourth full calendar year following April 9, 1997.

(4) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the Commissioner. Any interest obligation relating to the repayment of any subordinated debt must be similarly subordinated.

(A) The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.

(B) Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the Commissioner, shall not be considered a liability and shall be recorded as equity.

(b) *Deposit requirements.* — (1) Unless otherwise provided below, each health maintenance organization shall deposit with the Commissioner or, at the discretion of the Commissioner, with any organization or trustee acceptable to the Commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the Commissioner which at all times shall have a value of not less than \$300,000.

(2)(A) A health maintenance organization that is in operation on April 9, 1997 shall make a deposit equal to \$150,000.

(B) In the second year, the amount of the additional deposit for a health maintenance organization that is in operation on April 9, 1997 shall be equal to \$150,000, for a total of \$300,000.

(3) The deposit shall be an admitted asset of the health maintenance organization in the determination of net worth.

(4) All income from deposits shall be an asset of the organization. A health maintenance organization that has made a securities deposit may withdraw that deposit, or any part thereof, after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the Commissioner before being deposited or substituted.

(5) The deposit shall be used to protect the interests of the health maintenance organization's enrollees and to assure continuation of covered services to enrollees of a health maintenance organization which is in rehabilitation or conservation. The Commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If a health maintenance organization is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of the liquidation act.

(6) The Commissioner may reduce or eliminate the deposit requirement if a health maintenance organization deposits with the District treasurer,

Commissioner, or other official body of the District or jurisdiction of domicile for the protection of all enrollees, wherever located, of such health maintenance organization, cash, acceptable securities, or surety, and delivers to the Commissioner a certificate to such effect, duly authenticated by the regulatory authority in the state of domicile or by the appropriate District official holding the deposit.

(c) *Liabilities.* — Every health maintenance organization shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned dues and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which such organization is or may be liable, and to provide for the expense of adjustment or settlement of such claims. Such liabilities may be computed in accordance with generally accepted accounting principles.

(d) *Hold harmless.* — (1) Every contract between a health maintenance organization and a participating provider of health care services shall be in writing and shall set forth that in the event a health maintenance organization fails to pay for health care services as set forth in the contract, the enrollee shall not be liable to the provider for any sums owed by the health maintenance organization.

(2) In the event that the participating provider contract has not been reduced to writing as required by this subsection or that the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the enrollee sums owed by a health maintenance organization.

(3) No participating provider, agent, trustee, or assignee thereof may maintain any action at law against an enrollee to collect sums owed by a health maintenance organization.

(e) *Continuation of benefits.* — (1) The Commissioner shall require that each health maintenance organization have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits.

(2) In considering the plan, the Commissioner may require:

(A) Insurance to cover the expenses to be paid for continued benefits after an insolvency;

(B) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after a health maintenance organization's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;

(C) Insolvency reserves;

(D) Acceptable letters of credit; and

(E) Any other arrangements to assure that benefits are continued as specified above.

(f) *Notice of termination.* — An agreement to provide covered services between a provider and a health maintenance organization must require that



if the provider terminates the agreement, the provider shall give the organization at least 60 days advance notice of termination. (Apr. 9, 1997, D.C. Law 11-235, § 13, 44 DCR 818.)

**Section references.** — This section is referred to in §§ 35-4502, 35-4503, 35-4508, 35-4513, and 35-4519.

**Legislative history of Law 11-235.** — See note to § 35-4501.

### § 35-4513. Uncovered expenditures insolvency deposit.

(a) If at any time uncovered expenditures exceed 10% of total health care expenditures, a health maintenance organization shall place an uncovered expenditures insolvency deposit with the Commissioner, or with any organization or trustee acceptable to the Commissioner through which a custodial or controlled account is maintained, cash or securities that are acceptable to the Commissioner. The deposit shall at all times have a fair market value in an amount of 120% of the HMO's outstanding liability for uncovered expenditures for enrollees in the District, including incurred, but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. If a health maintenance organization is not otherwise required to file a quarterly report, it shall file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section.

(b) The deposit required under this section is in addition to the deposit required under § 35-4512 and is an admitted asset of a health maintenance organization in the determination of net worth. All income from deposits or trust accounts shall be assets of a health maintenance organization and may be withdrawn from the deposit or account quarterly with the approval of the Commissioner.

(c)(1) A health maintenance organization that has made a deposit may withdraw that deposit or any part of the deposit if:

(A) A substitute deposit of cash or securities of equal amount and value is made;

(B) The fair market value exceeds the amount of the required deposit; or

(C) The required deposit under subsection (a) of this section is reduced or eliminated.

(2) Deposits, substitutions or withdrawals may be made only with the prior written approval of the Commissioner.

(d) The deposit required under this section is in trust and may be used only as approved under this section. The Commissioner may use the deposit of an insolvent health maintenance organization for administrative costs associated with administering the deposit and payment claims of enrollees of the District for uncovered expenditures. Claims for uncovered expenditures shall be paid on a pro rata basis based on assets available to pay such ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the health maintenance organization.

(e) The Commissioner may by regulation prescribe the time, manner, and form for filing claims under subsection (d) of this section.

(f) The Commissioner may by regulation or order require health maintenance organizations to file annual, quarterly, or more frequent reports as the Commissioner deems necessary to demonstrate compliance with this section. The Commissioner may require that the reports include liability for uncovered expenditures as well as an audit option. (Apr. 9, 1997, D.C. Law 11-235, § 14, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### § 35-4514. Enrollment period; replacement coverage in the event of insolvency.

(a) *Enrollment period.* — (1) In the event of the insolvency of a health maintenance organization, upon order of the Commissioner all other carriers that participated in the enrollment process with the insolvent health maintenance organization at a group's last regular enrollment period shall offer such group's enrollees of the insolvent health maintenance organization a 30-day enrollment period commencing upon the date of insolvency. Each carrier shall offer such enrollees of the insolvent health maintenance organization the same coverages and rates that it had offered to the enrollees of the group at its last regular enrollment period.

(2) If no other carrier has been offered to groups enrolled in the insolvent health maintenance organization or if the Commissioner determines that the other health benefit plans lack sufficient health care delivery resources to assure that health care services will be available and accessible to all of the group enrollees of the insolvent health maintenance organization, then the Commissioner shall allocate equitably the insolvent health maintenance organization's group contracts for such groups among all health maintenance organizations which operate within a portion of the insolvent health maintenance organization's service area, taking into consideration the health care delivery resources of each health maintenance organization. Each health maintenance organization to which a group or groups are so allocated shall offer such group or groups the health maintenance organization's existing coverage which is most similar to each group's coverage with the insolvent health maintenance organization at rates determined in accordance with the successor health maintenance organization's existing rating methodology.

(3) The Commissioner shall also allocate equitably the insolvent health maintenance organization's nongroup enrollees which are unable to obtain other coverage among all health maintenance organizations which operate within a portion of the insolvent health maintenance organization's service area, taking into consideration the health care delivery resources of each such health maintenance organization. Each health maintenance organization to which nongroup enrollees are allocated shall offer nongroup enrollees the health maintenance organization's existing coverage for individual or conversion coverage as determined by this type of coverage in the insolvent health

maintenance organization's existing rating methodology. Successor health maintenance organizations which do not offer direct nongroup enrollment may aggregate all of the allocated nongroup enrollees into one group for rating and coverage purposes.

(b) *Replacement coverage.* — (1) For the purposes of this subsection, the term “discontinuance” means the termination of the contract between the group contract holder and a health maintenance organization due to the insolvency of the health maintenance organization and does not refer to the termination of any agreement between any individual enrollee and the health maintenance organization.

(2) Any carrier providing replacement coverage with respect to group hospital, medical or surgical expense or service benefits within a period of 60 days from the date of discontinuance of a prior health maintenance organization contract or policy providing such hospital, medical, or surgical expense or service benefits shall immediately cover all enrollees who were validly covered under the previous health maintenance organization contract or policy at the date of discontinuance and who would otherwise be eligible for coverage under the succeeding carrier's contract, regardless of any provisions of the contract relating to active employment or hospital confinement or pregnancy.

(3) Except to the extent benefits for the condition would have been reduced or excluded under the prior carrier's contract or policy, no provision in a succeeding carrier's contract of replacement coverage which would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted the effective date of the succeeding carrier's contract shall be applied with respect to those enrollees validly covered under the prior carrier's contract or policy on the date of discontinuance. (Apr. 9, 1997, D.C. Law 11-235, § 15, 44 DCR 818.)

**Section references.** — This section is referred to in §§ 35-4503 and 35-4530.

**Legislative history of Law 11-235.** — See note to § 35-4501.

### § 35-4515. Filing requirements for rating information.

(a) No fees may be used until either a schedule of enrollment fees or methodology for determining enrollment fees dues has been filed with and approved by the Commissioner.

(b) Either a specific schedule of fees, or a methodology for determining fees, shall be established in accordance with actuarial principles for various categories of enrollees, provided that the enrollment fees applicable to an enrollee shall not be individually determined based on the status of an enrollee's health. However, the fees shall not be excessive, inadequate, or unfairly discriminatory. A statement by a qualified actuary or other qualified person acceptable to the Commissioner as to the appropriateness of the use of the methodology, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

(c) The Commissioner shall approve the schedule of enrollment fees dues or methodology for determining enrollment fees if the requirements of subsection (b) of this section are met. If the Commissioner disapproves the filing, the



Commissioner shall notify the health maintenance organization. In the notice, the Commissioner shall specify the reasons for disapproval. A hearing shall be held within 30 days after a request in writing by the person filing. If the Commissioner does not take action on the schedule or methodology within 30 days of the filing, it shall be deemed approved. (Apr. 9, 1997, D.C. Law 11-235, § 16, 44 DCR 818.)

**Section references.** — This section is referred to in § 35-4519.

**Legislative history of Law 11-235.** — See note to § 35-4501.

## **§ 35-4516. Regulation of health maintenance organization producers.**

(a) The Commissioner shall issue rules and regulations to provide for the licensing of health maintenance organization producers. The rules shall establish:

(1) The requirements for licensure of resident health maintenance organization producers;

(2) The conditions for entering into reciprocal agreements with other jurisdictions for the licensure of nonresident health maintenance organization producers;

(3) Any examination, preclicensing, or continuing education requirements;

(4) The requirements for registering and terminating the appointment of health maintenance organization producers;

(5) Any requirements for registering any assumed names or office locations in which a health maintenance organization producer does business;

(6) The conditions for health maintenance organization producer license renewal;

(7) The grounds for denial, refusal, suspension, or revocation of a health maintenance organization producer's license;

(8) Any required fees for the licensing activities of health maintenance organization producers; and

(9) Any other requirement or procedure and any form as may be reasonably necessary to provide for the effective administration of the licensing of health maintenance organization producers under this section.

(b) The provisions of subsection (a) of this section shall not apply to the following:

(1) Any regular salaried officer or employee of a health maintenance organization who devotes substantially all of his time to activities other than the taking or transmitting of applications or membership fees or premiums for health maintenance organization membership, or who receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

(2) Employers or their officers or employees or the trustees of any employee benefit plan to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits involving the use of health maintenance organization

memberships; provided, that such employers, officers, employees, or trustees are not in any manner compensated directly or indirectly by the health maintenance organization memberships;

(3) Banks or their officers and employees to the extent that such banks, officers, and employees collect and remit charges, charging the same against accounts of depositors on the orders of such depositors; or,

(4) Any person or the employee of any person who has contracted to provide administrative, management, or health care services to a health maintenance organization and who is compensated for those services by the payment of an amount calculated as a percentage of the revenues, net income or profits of the health maintenance organization, if that method of compensation is the sole basis for subjecting that person or the employee of the person to this chapter.

(c) The Commissioner may, by rule, exempt certain classes of persons from the requirements of subsection (a) of this section if:

(1) The functions they perform do not require special competence, trustworthiness or the regulatory surveillance made possible by licensing; or,

(2) Other existing safeguards make regulation unnecessary. (Apr. 9, 1997, D.C. Law 11-235, § 17, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4517. Powers of insurance corporations.

(a) An insurance company authorized to do business in the District may, either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of this chapter. Notwithstanding any other provisions of law, any 2 or more such insurance companies, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. The business of insurance is deemed to include the providing of health care by a health maintenance organization owned or operated by an insurer or subsidiary thereof.

(b) Notwithstanding any other provision of insurance laws, an insurer may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of a health maintenance organization to meet its obligations.

(c) The enrollees of a health maintenance organization constitute a permissible group under such laws. Among other things, under such contracts the insurer may make benefit payments to health maintenance organizations for health care services rendered by providers. (Apr. 9, 1997, D.C. Law 11-235, § 18, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### § 35-4518. Examinations.

(a) The Commissioner may make an examination of the affairs of any health maintenance organization and providers with whom the organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of the District, but not less frequently than once every 3 years.

(b) The Commissioner may make an examination concerning the quality assurance program of a health maintenance organization and of any providers with whom a health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of the District, but not less frequently than once every 3 years.

(c) Every health maintenance organization and provider shall make its books and records available for such examinations and in every way facilitate the completion of the examination. For the purpose of examinations, the Commissioner may administer oaths to and examine the officers and agents of a health maintenance organization and the principals of such providers concerning their business.

(d) The expenses of examinations under this section shall be assessed against the health maintenance organization being examined and remitted to the Commissioner for whom the examination is being conducted.

(e) Such examination made by the Commissioner shall be performed in a manner to provide efficient effective review. In this regard the Commissioner shall work to avoid duplication of effort by using information prepared by the health maintenance organization, and, to the extent possible, coordinating such examinations with other jurisdictions which may be performing similar examinations of the health maintenance organization.

(f) In lieu of such examination, the Commissioner may accept the report of an examination made by the appropriate officials of another state. (Apr. 9, 1997, D.C. Law 11-235, § 19, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### § 35-4519. Suspension or revocation of certificate of authority.

(a) Any certificate of authority issued under this chapter may be suspended or revoked, and any application for a certificate of authority may be denied, if the Commissioner finds that any of the conditions listed below exist:

(1) A health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner inconsistent with this chapter.

(2) A health maintenance organization issued an evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of §§ 35-4507 and 35-4515.

(3) A health maintenance organization does not provide or arrange for basic health care services.



(4) The Commissioner certifies that:

(A) A health maintenance organization does not meet the requirements of § 35-4503(b); or

(B) A health maintenance organization is unable to fulfil its obligations to furnish health care services.

(5) A health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(6) A health maintenance organization has failed to correct, within the time prescribed by subsection (c) of this section, any deficiency occurring due to such health maintenance organization's prescribed minimum net worth being impaired.

(7) A health maintenance organization has failed to implement the grievance procedure required by § 35-4510 in a reasonable manner to resolve valid complaints.

(8) A health maintenance organization, or any person authorized to act on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) The continued operation of a health maintenance organization would be dangerous to its enrollees.

(10) The health maintenance organization has otherwise failed substantially to comply with this chapter.

(b) In addition to, or in lieu of suspension or revocation of a certificate of authority pursuant to this section, the applicant or health maintenance organization may be subject to an administrative penalty of up to \$1000 a day for each cause for suspension or revocation.

(c) The following shall pertain when insufficient net worth is maintained:

(1) Whenever the Commissioner finds that the net worth maintained by any health maintenance organization subject to the provisions of this chapter is less than the minimum net worth required to be maintained by § 35-4512, the Commissioner shall give written notice to the health maintenance organization of the amount of the deficiency and require:

(A) Filing with the Commissioner a plan for correction of the deficiency acceptable to the Commissioner; and

(B) Correction of the deficiency within a reasonable time, not to exceed 60 days, unless an extension of time is granted by the Commissioner.

(2) Such a deficiency shall be deemed an impairment, and failure to correct the impairment in the prescribed time shall be grounds for suspension or revocation of the certificate of authority or for placing the health maintenance organization in conservation, rehabilitation, or liquidation.

(3) Except for newborn children, other newly acquired dependents of existing enrollees, or other newly eligible individuals, or as otherwise allowed by the Commissioner, no health maintenance organization or person acting on its behalf may, directly or indirectly, renew, issue, or deliver any certificate, agreement, or contract of coverage in the District, for which a premium dues is charged or collected, when a health maintenance organization writing such coverage is impaired, and the fact of the impairment is known to the health maintenance organization or to the person.

(4) The existence of an impairment, however, shall not prevent the issuance or renewal of a certificate, agreement, or contract when the enrollee exercises an option granted under the plan to obtain a new, renewed, or converted coverage.

(d) A certificate of authority shall be suspended or revoked, or an application or a certificate of authority denied, or an administrative penalty imposed only after compliance with the requirements of this section.

(1) Suspension or revocation of a certificate of authority, the denial of an application, or the imposition of an administrative penalty pursuant to this section shall be by written order and shall be sent to the health maintenance organization or applicant by certified or registered mail. The written order shall state the grounds, charges, or conduct on which suspension, revocation, or denial or administrative penalty is based. A health maintenance organization or applicant may in writing request a hearing within 30 days from the date of mailing of the order. If no written request is made, such order shall be final upon the expiration of the 30 days.

(2) If a health maintenance organization or applicant requests a hearing pursuant to this section, the Commissioner shall issue a written notice of hearing and send it to the health maintenance organization or applicant by certified or registered mail. The notice shall include the following:

(A) A specific time for the hearing, which may not be less than 20 days nor more than 30 days after mailing of the notice of hearing; and

(B) A specific place for the hearing.

(3) If a hearing is requested, the Commissioner or his designated representative shall be in attendance and shall participate in the proceedings. The recommendations and findings of the Commissioner in respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority shall be conclusive and binding upon the Mayor.

(4) After such a hearing, or upon failure of the health maintenance organization to appear at the hearing, the Commissioner shall take whatever action he or she deems necessary based on written findings and shall mail his or her decision to the health maintenance organization or applicant. The action of the Commissioner shall be subject to review under subchapter I of Chapter 15 of Title 1.

(5) The provisions of the DCAPA shall apply to proceedings under this section.

(6) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children, other newly acquired dependents of existing enrollees, or other newly eligible individuals, and shall not engage in any advertising or solicitation whatsoever.

(7) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order or revocation, to wind up its affairs within the District, and shall conduct no further business within the District except as may be essential to the orderly conclusion of the affairs of such organization within the

District. It shall engage in no further advertising or solicitation whatsoever within the District. The Commissioner may, by written order, permit such further operation of the organization as the Commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. (Apr. 9, 1997, D.C. Law 11-235, § 20, 44 DCR 818.)

**Section references.** — This section is referred to in §§ 35-4503 and 35-4523.

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4520. Rehabilitation, liquidation, or conservation of health maintenance organizations.

(a) Any rehabilitation, liquidation, or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the Commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The Commissioner may apply for an order directing the Commissioner to rehabilitate, liquidate, or conserve a health maintenance organizations upon any one or more grounds set forth in §§ 35-2810 and 35-2815, or when in the Commissioner's opinion the continued operation of a health maintenance organization would be hazardous either to the enrollees or to the people of the District. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(b) For the purposes of determining the priority of distribution of general assets, claims of enrollees and enrollees' beneficiaries shall have the same priority as established by § 35-2815, for policyholders and beneficiaries of insured of insurance companies. If an enrollee is liable to any provider for services provided pursuant to and covered by the health care plan, that liability shall have the status of an enrollee claim for distribution of general assets.

(c) Any provider who is obligated by statute or agreement to hold enrollees harmless from liability for services pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of enrollees and enrollee's beneficiaries as described herein, and immediately preceding the priority of distribution. (Apr. 9, 1997, D.C. Law 11-235, § 21, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4521. Summary orders and supervision.

(a) Whenever the Commissioner determines that the financial condition of any health maintenance organization is such that its continued operation might be hazardous to its enrollees, creditors, or the general public, or that it has violated any provision of this chapter, the Commissioner may, after notice and hearing, order the health maintenance organization to take such action



reasonably necessary to rectify the condition or violation, including, but not limited to, 1 or more of the following:

- (1) Reduce the total amount of present and potential liability for benefits by reinsurance or other method acceptable to the Commissioner;
- (2) Reduce the volume of new business being accepted;
- (3) Reduce expenses by specified methods;
- (4) Suspend or limit the writing of new business for a period of time;
- (5) Increase the health maintenance organization's capital and surplus by contribution; or
- (6) Take such other steps as the Commissioner may deem appropriate under the circumstances.

(b) For the purposes of this section, a violation by a health maintenance organization of any law of the District to which the health maintenance organization is subject shall be deemed a violation of this chapter.

(c) The Commissioner is authorized, by rules and regulations, to set uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public and to set standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purpose expressed in subsection (a) of this section.

(d) The remedies and measures available to the Commissioner under this section shall be in addition to, and not in lieu of, the remedies and measures available to the Commissioner under the provisions of Chapter 28 of this title. (Apr. 9, 1997, D.C. Law 11-235, § 22, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4522. Regulations.

The Commissioner, within 120 days of April 9, 1997, shall issue rules and regulations necessary to implement the provisions of this chapter. To facilitate the timely issuance of rules and regulations, the Commissioner may contract out for the drafting of rules and regulations pursuant to emergency procurement provisions set forth in § 1-1183.12. (Apr. 9, 1997, D.C. Law 11-235, § 23, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4523. Penalties and enforcement.

(a) The Commissioner may, in lieu of suspension or revocation of a certificate of authority under § 35-4519, levy an administrative penalty in an amount not less than \$10,000 nor more than \$50,000, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The Commissioner may augment this penalty by an amount equal to the sum that the Commissioner

calculates to be the damages suffered by enrollees or other members of the public.

(b)(1) If the Commissioner shall for any reason have cause to believe that any violation of this chapter has occurred or is threatened, the Commissioner may give notice to a health maintenance organization and to its representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation; and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

(2) Proceedings under this subsection shall not be governed by any formal procedural requirements and may be conducted in such manner as the Commissioner may deem appropriate under the circumstances. However, unless consented to by the health maintenance organization, no rule or order may result from a conference until the requirements of this section are satisfied.

(c)(1) The Commissioner may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violation of the provisions of this chapter.

(2) Within 30 days after service of the cease and desist order, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. Such hearings shall be conducted pursuant to the DCAPA, and judicial review shall be available as provided by the DCAPA.

(d) In the case of any violation of the provisions of this chapter, if the Commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (c) of this section, the Commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the Superior Court of the District of Columbia.

(e) Notwithstanding any other provisions of this chapter, if a health maintenance organization fails to comply with the net worth requirement of this chapter, the Commissioner may take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees. (Apr. 9, 1997, D.C. Law 11-235, § 25, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

## **§ 35-4524. Statutory construction and relationship to other laws.**

(a) Except as otherwise provided in this chapter, provisions of insurance laws and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision shall not apply to an insurer or

hospital or medical service corporation licensed and regulated pursuant to the insurance laws of the District except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(b) Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

(c) Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and shall be exempt from the provisions set forth by the Board of Medicine relating to the practice of medicine. (Apr. 9, 1997, D.C. Law 11-235, § 26, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### **§ 35-4525. Filings and reports as public documents.**

All applications, filings, and reports required under this chapter shall be treated as public documents, except those which are trade secrets or privileged or confidential quality assurance, commercial, and financial information, other than any annual financial statement that may be required under § 35-4508. (Apr. 9, 1997, D.C. Law 11-235, § 27, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### **§ 35-4526. Confidentiality of medical information and limitation of liability.**

(a) Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this chapter:

(1) When needed for the conduct of the health maintenance organization's business;

(2) Upon the express consent of the enrollee or applicant;

(3) Pursuant to statute or court order for the production of evidence or the discovery thereof; or

(4) In the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent.

(b) A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim.

(c) A person who, in good faith and without malice or negligence, takes any action or makes any decision or recommendation as a member, agent, or employee of a health care review committee, or who furnishes any records, information, or assistance to such a committee shall not be subject to liability for civil damages or any legal action in consequence of such action, nor shall the health maintenance organization which established such committee or the



officers, directors, employees, or agents of such health maintenance organization be liable for the activities of any such person. This section shall not be construed to relieve any person of liability arising from treatment of a patient.

(d)(1) The information considered by a health care review committee and the records of their actions and proceedings shall be confidential and not subject to subpoena or order to produce except in proceedings before the appropriate District of Columbia licensing or certifying agency, or in an appeal, if permitted, from the committee's findings or recommendations. No member of a health care review committee, or officer, director or other member of the health maintenance organization or its staff engaged in assisting such committee, or any person assisting or furnishing information to such committee, may be subpoenaed to testify in any judicial or quasi-judicial proceeding if such subpoena is based solely on such activities.

(2) Information considered by a health care review committee and the records of its action and proceedings which are used pursuant to this subsection by a state licensing or certifying agency or in appeal shall be kept confidential and shall be subject to the same provision concerning discovery and use in legal actions as are the same provision concerning discovery and use in legal actions as are the original information and records in the possession and control of a health care review committee.

(e) To fulfill its obligations under § 35-4506, a health maintenance organization shall have access to treatment records and other information pertaining to the diagnosis, treatment, or health status of any enrollee. (Apr. 9, 1997, D.C. Law 11-235, § 28, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### **§ 35-4527. Acquisition of control of or merger of a health maintenance organization.**

(a) No person may make a tender for or a request or invitation for tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization, or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the Commissioner and has sent to the health maintenance organization the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to herein is to be effected (hereinafter called "acquiring party"); and

(A) If such person is an individual, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations during the past 10 years; or

(B) If such person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (A) of this paragraph;

(2) The source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such considerations; provided, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party may have to liquidate such health maintenance organizations, to sell its assets, or merge or consolidate it with any person; or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to herein which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to herein, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) The amount of each class of any security referred to herein which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to herein in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such descriptions shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any security referred to herein during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore;

(9) A description of any recommendations to purchase any security referred to herein made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) Copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to herein, and (if distributed) of additional soliciting material relating thereto;

(11) The terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to herein for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto; and

(12) Such additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of members and security holders of the health maintenance organization or in the public interest.

(b) If the person required to file the statement referred to in this section is a partnership, limited partnership, syndicate, or other group, the Commissioner may require that the information called for by subsection (a)(1) through (8) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to herein is a corporation, the Commissioner may require that the information called for by subsection (a)(1) through (8) of this section shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such health maintenance organization pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer within 2 business days after the person learns of such change. Such insurer shall send such amendment to its shareholders. (Apr. 9, 1997, D.C. Law 11-235, § 29, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

## § 35-4528. Coordination of benefits.

(a) Health maintenance organizations are permitted, but not required, to adopt coordination of benefits provisions to avoid overinsurance and to provide for the orderly payment of claims when a person is covered by 2 or more carriers or health care plans.

(b) If health maintenance organizations adopt coordination of benefits, the provisions must be consistent with the coordination of benefits provisions that



are in general use the District for coordinating coverage between two or more group health insurance or health care plans.

(c) To the extent necessary for health maintenance organizations to meet their obligations as secondary carriers under the rules for coordination, health maintenance organizations shall make payments for services that are received from nonparticipating providers, provided outside their service areas, or not covered under the terms of their group contracts or evidence of coverage. (Apr. 9, 1997, D.C. Law 11-235, § 30, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### **§ 35-4529. Point of service plan.**

(a) If an employer, association, or other private group arrangement offers health benefit plan coverage to employees or individuals only through a health maintenance organization, the health maintenance organization with which the employer, association, or other private group arrangement is contracting for the coverage shall offer, or contract with another carrier to offer, a point-of-service option to the employer, association, or other private group arrangement in conjunction with the health maintenance organization as an additional benefit for an employee or individual, at the employee's or individual's option to accept or reject.

(b) An employer, association, or other private group arrangement may require an employee or individual that accepts the additional coverage under a point-of-service option under subsection (a) of this section to pay a premium over the amount of the premium for the coverage offered by the health maintenance organization.

(c) A health maintenance organization may impose different cost sharing provisions for the point-of-service option based on whether the service is provided through the provider panel of the health maintenance organization or outside the providers panel of the health maintenance organization.

(d) The requirements of this section shall not apply to any subscriber contract current and in force on April 9, 1997 for the duration of that contract, but these requirements shall apply to any renewal or new subscriber contract issued subsequent to April 9, 1997.

(e) The requirements of this section shall not apply to any subscriber contract issued in the individual market to a person who is not part of a contracted group of subscribers. (Apr. 9, 1997, D.C. Law 11-235, § 31, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.

### **§ 35-4530. Insolvency protection; assessment.**

(a) When a health maintenance organization in the District is declared insolvent by a court of competent jurisdiction, the Commissioner may levy an assessment on health maintenance organizations doing business in the Dis-

trict to pay claims for uncovered expenditures for enrollees who are residents of the District and to provide continuation of coverage for enrollees not covered under § 35-4514. The Commissioner may not assess in any one calendar year more than 2% of the aggregate premium written by each health maintenance organization in the District the prior calendar year.

(b) The Commissioner may use funds obtained under subsection (a) of this section to pay claims for uncovered expenditures for enrollees of an insolvent health maintenance organization who are residents of the District, provide for continuation of coverage for enrollees who are residents of the District and are not covered under § 35-4514, and administrative costs. The Commissioner may by regulation prescribe the time, manner, and form for filing claims under this section, or may require claims to be allowed by an ancillary receiver or the domestic liquidator or receiver.

(c) A receiver or liquidator of an insolvent health maintenance organization shall allow a claim in the proceeding in an amount equal to administrative and uncovered expenditures paid under this section.

(1) Any person receiving benefits under this section for uncovered expenditures is deemed to have assigned the rights under the covered health care plan certificates to the Commissioner to the extent of the benefits received. The Commissioner may require an assignment to it of such rights by an payee, enrollee, or beneficiary as a condition precedent to the receipt of any rights or benefits conferred by this section upon such person. The Commissioner is subrogated to these rights against the assets of any insolvent health maintenance organization held by a receiver or liquidator of another jurisdiction.

(2) The assignment or subrogation rights of the Commissioner and allowed claim under this subsection have the same priority against the assets of any insolvent health maintenance organization held by a receiver or liquidator of another jurisdiction.

(d) When assessed funds are unused following the completion of the liquidation of a health maintenance organization, the Commissioner will distribute on a pro rata basis any amounts received under subsection (a) of this section which are not de minimus to the health maintenance organizations which have been assessed under this section.

(e) The aggregate coverage of uncovered expenditures under this section shall not exceed \$300,000 with respect to any one individual. Continuation of coverage shall not continue for more than the lesser of 1 year after the health maintenance organization coverage is terminated by insolvency or the remaining term of the contract. The Commissioner may provide continuation of coverage on any reasonable basis, including, but not limited to, continuation of the health maintenance organization contract or substitution of indemnity coverage in a form determined by the Commissioner.

(f) The Commissioner may waive an assessment of any health maintenance organization if it would be or is impaired or placed in financially hazardous condition. A health maintenance organization which fails to pay an assessment within 30 days after notice is subject to a civil forfeiture of not more than \$1,000 per day or suspension or revocation of its certificate of authority, or both. Any action taken by the Commissioner in enforcing the provisions of this

section may be appealed by the health maintenance organization in accordance with the DCAPA. (Apr. 9, 1997, D.C. Law 11-235, § 32, 44 DCR 818.)

**Legislative history of Law 11-235.** — See note to § 35-4501.



CHAPTER 46. RISK-BASED CAPITAL.

Sec.	Sec.
35-4601. Definitions.	nouncements; prohibition on use in ratemaking.
35-4602. RBC Reports.	
35-4603. Company Action Level Event.	35-4609. Supplemental provisions; rules; exemption.
35-4604. Regulatory Action Level Event.	35-4610. Foreign Insurers.
35-4605. Authorized Control Level Event.	35-4611. Immunity.
35-4606. Mandatory Control Level Event.	35-4612. Notices.
35-4607. Hearings.	35-4613. Phase-in provision.
35-4608. Confidentiality; prohibition on an-	

§ 35-4601. Definitions.

For the purposes of this chapter, the term:

(1) “Adjusted RBC Report” means an RBC report that has been adjusted by the Commissioner in accordance with § 35-4602(c).

(2) “Commissioner” means the Commissioner of Insurance and Securities.

(3) “Corrective order” means an order issued by the Commissioner specifying corrective actions which the Commissioner has determined are required.

(4) “District” means the District of Columbia.

(5) “Domestic insurer” means any insurance company domiciled in the District.

(6) “Foreign insurer” means any insurance company which is licensed to do business in the District, but is not domiciled in the District.

(7) “Life or health insurer” means any insurance company licensed to underwrite life or health insurance, or a licensed property and casualty insurer writing only accident and health insurance.

(8) “NAIC” means the National Association of Insurance Commissioners.

(9) “Negative trend” means, with respect to a life or health insurer, negative trend over a period of time, as determined in accordance with the “Trend Test Calculation” included in the RBC Instructions.

(10) “Property and casualty insurer” means any insurance company licensed to underwrite property and casualty insurance, but does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(11) “RBC” means risk-based capital.

(12) “RBC Instructions” means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(13) “RBC Level” means an insurer’s Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(A) “Company Action Level RBC” means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;

(B) “Regulatory Action Level RBC” means the product of 1.5 and its Authorized Control Level RBC;

(C) “Authorized Control Level RBC” means the number determined under the risk-based capital formula in accordance with the RBC Instructions; and

(D) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(14) "RBC Plan" means a comprehensive financial plan containing the elements specified in § 35-4603(b). If the Commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the "Revised RBC Plan".

(15) "RBC Report" means the report required in § 35-4602.

(16) "Total adjusted capital" means the sum of:

(A) An insurer's statutory capital and surplus; and

(B) Such other items, if any, as the RBC Instructions may provide.

(17) "State" means any of the several states, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands. (Apr. 9, 1997, D.C. Law 11-233, § 2, 44 DCR 765.)

**Legislative history of Law 11-233.** — Law 11-233, the "Risk-Based Capital Act of 1996," was introduced in Council and assigned Bill No. 11-237, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings

on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-493 and transmitted to both Houses of Congress for its review. D.C. Law 11-233 became effective on April 9, 1997.

## § 35-4602. RBC Reports.

(a) Every domestic insurer shall, on or prior to each March 1 ("filing date"), prepare and submit to the Commissioner a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC Instructions. In addition, every domestic insurer shall file its RBC Report:

(1) With the NAIC in accordance with the RBC Instructions; and

(2) With the commissioner in any state in which the insurer is authorized to do business, if the commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC Report not later than the later of:

(A) Fifteen days from the receipt of notice to file its RBC Report with that state; or

(B) The filing date.

(b) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may be adjusted for the covariance between:

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) All other business risks and such other relevant risks as are set forth in the RBC Instructions;

(c) Factors set forth in subsection (b)(1) through (4) of this section shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

(d) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account and may adjust for the covariance between:

- (1) Asset risk;
- (2) Credit risk;
- (3) Underwriting risk; and

(4) All other business risks and such other relevant risks as are set forth in the RBC Instructions;

(e) The factors set forth in subsection (d)(1) through (4) of this section shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

(f) An excess of capital over the amount produced by the risk-based capital requirements contained in this chapter and the formulas, schedules, and instructions referenced in this chapter is desirable in the business of insurance. Insurers should maintain capital above the RBC levels required by this chapter.

(g) If a domestic insurer files an RBC Report which in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. (Apr. 9, 1997, D.C. Law 11-233, § 3, 44 DCR 765.)

**Section references.** — This section is referred to in §§ 35-4601 and 35-4610.

**Legislative history of Law 11-233.** — See note to § 35-4601.

### § 35-4603. Company Action Level Event.

(a) For the purposes of this chapter, the term "Company Action Level Event" means any of the following events:

- (1) The filing of an RBC Report by an insurer which indicates that:

(A) The insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC, but less than its Company Action Level RBC; or

(B) If a life or health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC, but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend;

(2) The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates an event in paragraph (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under § 35-4607; or

(3) If, pursuant to § 35-4607, an insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a Company Action Level Event, the insurer shall prepare and submit to the Commissioner an RBC Plan which shall:

(1) Identify the conditions which contribute to the Company Action Level Event;



(2) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event;

(3) Provide projections of the insurer's financial results in the current year and at least the 4 succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, or surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(c) The RBC Plan shall be submitted to the Commissioner within 45 days of the Company Action Level Event; or if the insurer challenges an Adjusted RBC Report pursuant to § 35-4607, within 45 days after notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within 60 days after the submission by an insurer of an RBC Plan to the Commissioner, the Commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory. Upon notification from the Commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the Commissioner, and shall submit the Revised RBC Plan to the Commissioner within 45 days after the notification from the Commissioner; or if the insurer challenges the notification from the Commissioner under § 35-4607, within 45 days after a notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the Commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the Commissioner may at the Commissioner's discretion, subject to the insurer's right to a hearing under § 35-4607, specify in the notification that the notification constitutes a Regulatory Action Level Event as defined in § 35-4604.

(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(1) Such state has a RBC provision substantially similar to § 35-4608(a); and

(2) The insurance commissioner of that state has notified the insurer of its

request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

(A) Fifteen days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

(B) The date on which the RBC Plan or Revised RBC Plan is filed under § 35-4603(c) and d). (Apr. 9, 1997, D.C. Law 11-233, § 4, 44 DCR 765.)

**Section references.** — This section is referred to in §§ 35-4601, 35-4604, and 35-4613.

**Legislative history of Law 11-233.** — See note to § 35-4601.

## § 35-4604. Regulatory Action Level Event.

(a) For the purposes of this chapter, the term “Regulatory Action Level Event” means, with respect to any insurer, any of the following events:

(1) The filing of an RBC Report by the insurer which indicates that the insurer’s total adjusted capital is greater than or equal to its Authorized Control Level RBC, but less than its Regulatory Action Level RBC;

(2) The notification by the Commissioner to an insurer of an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under § 35-4607;

(3) If, pursuant to § 35-4607, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer’s challenge;

(4) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the Commissioner and has cured the failure within 10 days after the filing date;

(5) The failure of the insurer to submit an RBC Plan to the Commissioner within the time period set forth in § 35-4603(c);

(6) Notification by the Commissioner to the insurer that:

(A) The RBC Plan or revised RBC Plan submitted by the insurer is, in the judgment of the Commissioner, unsatisfactory; and

(B) Such notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination under § 35-4607;

(7) If, pursuant to § 35-4607, the insurer challenges a determination by the Commissioner under paragraph (6) of this subsection, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected such challenge;

(8) Notification by the Commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan and the Commissioner has so stated in the notification, provided the insurer has not challenged the determination under § 35-4607; or

(9) If, pursuant to § 35-4607, the insurer challenges a determination by the Commissioner under paragraph (8) of this subsection, the notification by

the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the challenge.

(b) In the event of a Regulatory Action Level Event, the Commissioner shall:

(1) Require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

(2) Perform such examination or analysis, as the Commissioner deems necessary, of the assets, liabilities, and operations of the insurer including a review of its RBC Plan or Revised RBC Plan; and

(3) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the Commissioner shall determine are required (“Corrective Order”).

(c) In determining corrective actions, the Commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the Commissioner’s examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC Instructions. The RBC Plan or Revised RBC Plan shall be submitted:

(1) Within 45 days after the occurrence of the Regulatory Action Level Event;

(2) If the insurer challenges an Adjusted RBC Report pursuant to § 35-4607 and the challenge is not frivolous in the judgment of the Commissioner, within 45 days after the notification to the insurer that the Commissioner has, after a hearing, rejected the insurer’s challenge; or

(3) If the insurer challenges a Revised RBC Plan pursuant to § 35-4607 and the challenge is not frivolous in the judgment of the Commissioner, within 45 days after the notification to the insurer that the Commissioner has, after a hearing, rejected the insurer’s challenge.

(d) The Commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commissioner to review the insurer’s RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities, and operations of the insurer, and formulate the Corrective Order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the Commissioner. (Apr. 9, 1997, D.C. Law 11-233, § 5, 44 DCR 765.)

**Section references.** — This section is referred to in §§ 35-4601, 35-4603, 35-4605, and 35-4613.

**Legislative history of Law 11-233.** — See note to § 35-4601.

## § 35-4605. Authorized Control Level Event.

(a) For the purposes of this chapter, the term “Authorized Control Level Event” means any of the following events:

(1) The filing of an RBC Report by the insurer which indicates that the insurer’s total adjusted capital is greater than or equal to its Mandatory Control Level RBC, but less than its Authorized Control Level RBC;



(2) The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under § 35-4607;

(3) If, pursuant to § 35-4607, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge;

(4) The failure of the insurer to respond, in a manner satisfactory to the Commissioner, to a corrective order (provided the insurer has not challenged the corrective order under § 35-4607); or

(5) If the insurer has challenged a corrective order under § 35-4607 and the Commissioner has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the Commissioner, to the corrective order subsequent to rejection or modification by the Commissioner.

(b) In the event of an Authorized Control Level Event with respect to an insurer, the Commissioner shall:

(1) Take such actions as are required under § 35-4604 regarding an insurer with respect to which an Regulatory Action Level Event has occurred; or

(2) If the Commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Chapter 28 of this title. In the event the Commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under Chapter 28 of this title, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Chapter 28 of this title. In the event the Commissioner takes actions under this paragraph pursuant to an Adjusted RBC Report, the insurer shall be entitled to such projections as are afforded to insurers under the provisions of Chapter 28 of this title pertaining to summary proceedings. (Apr. 9, 1997, D.C. Law 11-233, § 6, 44 DCR 765.)

**Section references.** — This section is referred to in § 35-4613.

**Legislative history of Law 11-233.** — See note to § 35-4601.

## § 35-4606. Mandatory Control Level Event.

(a) For the purposes of this chapter, the term "Mandatory Control Level Event" means any of the following events:

(1) The filing of an RBC Report which indicates that the insurer's total adjusted capital is less than its Mandatory Control Level RBC;

(2) Notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under § 35-4607; or

(3) If, pursuant to § 35-4607, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, notification

by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a Mandatory Control Level Event:

(1) With respect to a life insurer, the Commissioner shall take such actions as are necessary to place the insurer under regulatory control under Chapter 28 of this title. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under Chapter 28 of this title, and the Commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in Chapter 28 of this title. If the Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of Chapter 28 of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90-day period.

(2) With respect to a property and casualty insurer, the Commissioner shall take such actions as are necessary to place the insurer under regulatory control under Chapter 28 of this title, or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the Commissioner. In either event, the Mandatory Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under Chapter 28 of this title, and the Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 28 of this title. If the Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of Chapter 28 of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90-day period. (Apr. 9, 1997, D.C. Law 11-233, § 7, 44 DCR 765.)

**Section references.** — This section is referred to in § 35-4613.

**Legislative history of Law 11-233.** — See note to § 35-4601.

## § 35-4607. Hearings.

(a) The insurer shall have a right to a hearing, at which the insurer may challenge any of the following determinations or actions by the Commissioner:

(1) Notification to an insurer by the Commissioner of an Adjusted RBC Report;

(2) Notification to an insurer by the Commissioner that:

(A) The insurer's RBC Plan or Revised RBC Plan is unsatisfactory; and

(B) Such notification constitutes a Regulatory Action Level Event with respect to such insurer;

(3) Notification to any insurer by the Commissioner that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has

a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event with respect to the insurer in accordance with its RBC Plan or Revised RBC Plan; or

(4) Notification to an insurer by the Commissioner of a Corrective Order with respect to the insurer.

(b) The insurer shall notify the Commissioner of its request for a hearing within 5 days after the notification by the Commissioner under subsection (a) of this section. Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing, which date shall be no less than 10 nor more than 30 days after the date of the insurer's request. (Apr. 9, 1997, D.C. Law 11-233, § 8, 44 DCR 765.)

**Section references.** — This section is referred to in §§ 35-4603, 35-4604, 35-4605, and 35-4606.

**Legislative history of Law 11-233.** — See note to § 35-4601.

## **§ 35-4608. Confidentiality; prohibition on announcements; prohibition on use in ratemaking.**

(a) All RBC Reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and RBC Plans (including the results or report of any examination or analysis of an insurer performed pursuant hereto and any Corrective Order issued by the Commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer which are filed with the Commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the Commissioner. This information shall not be made public or be subject to subpoena, other than by the Commissioner and then only for the purpose of enforcement actions taken by the Commissioner pursuant to this chapter or any other provision of the insurance laws of the District. This information is also exempt from any applicable freedom of information law, public records law, public records disclosure law, or other similar statute.

(b) Except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC Levels (or any of them) or an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is able to demonstrate to the Commissioner with substantial proof the falsity of such



statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(c) The RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans shall not be used by the Commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the Commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write. (Apr. 9, 1997, D.C. Law 11-233, § 9, 44 DCR 765.)

**Section references.** — This section is referred to in § 35-4603.

**Legislative history of Law 11-233.** — See note to § 35-4601.

### § 35-4609. Supplemental provisions; rules; exemption.

(a) The provisions of this chapter are supplemental to any other provisions of the laws of the District, and shall not preclude or limit any other powers or duties of the Commissioner under such laws, including, but not limited to, Chapter 28 and Chapter 35 of this title.

(b) The Commissioner may adopt reasonable rules necessary for the implementation of this chapter.

(c) The Commissioner may exempt from the application of this chapter to any insurer which;

(1) Writes direct business only in the District;

(2) Writes direct annual premiums of \$1 million or less; and

(3) Assumes no reinsurance in excess of 5% of direct premium written. (Apr. 9, 1997, D.C. Law 11-233, § 10, 44 DCR 765.)

**Legislative history of Law 11-233.** — See note to § 35-4601.

### § 35-4610. Foreign Insurers.

(a) Any foreign insurer, upon the written request of the Commissioner, shall submit to the Commissioner an RBC Report as of the end of the calendar year just ended on the later of:

(1) The date an RBC Report would be required to be filed by a domestic insurer under this chapter; or

(2) Fifteen days after the request is received by the foreign insurer.

(b) Any foreign insurer shall, at the written request of the Commissioner, promptly submit to the Commissioner a copy of any RBC Plan that is filed with the commissioner of any other state.

(c) In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event, with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state under the provisions of this chapter), if the insurance commissioner or similar authority of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC

Plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under § 35-4602), the Commissioner may require the foreign insurer to file an RBC Plan with the Commissioner. In such event, the failure of the foreign insurer to file an RBC Plan with the Commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in the District.

(d) In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the Commissioner may make application to the Superior Court permitted under Chapter 28 of this title with respect to the liquidation of property of foreign insurers found in the District, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application. (Apr. 9, 1997, D.C. Law 11-233, § 11, 44 DCR 765.)

**Legislative history of Law 11-233.** — See note to § 35-4601.

### § 35-4611. Immunity.

There shall be no liability on the part of, and no cause of action shall arise against, the Commissioner or the Department of Insurance and Securities Regulation or its employees or agents for any action taken by them in the performance of their powers and duties under this chapter. (Apr. 9, 1997, D.C. Law 11-233, § 12, 44 DCR 765.)

**Legislative history of Law 11-233.** — See note to § 35-4601.

### § 35-4612. Notices.

All notices by the Commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice. (Apr. 9, 1997, D.C. Law 11-233, § 13, 44 DCR 765.)

**Legislative history of Law 11-233.** — See note to § 35-4601.

### § 35-4613. Phase-in provision.

(a) For RBC Reports required to be filed by life insurers with respect to 1993, the following requirements shall apply in lieu of the provisions of §§ 35-4603, 35-4604, 35-4605, and 35-4606:

(1) In the event of a Company Action Level Event with respect to a domestic insurer, the Commissioner shall take no regulatory action hereunder.

(2) In the event of an Regulatory Action Level Event under § 35-4604(a)(1), (2) or (3), the Commissioner shall take the actions required under § 35-4603.

(3) In the event of an Regulatory Action Level Event under § 35-4604(a)(4), (5), (6), (7), (8), or (9) or an Authorized Control Level Event, the Commissioner shall take the actions required under § 35-4604 with respect to the insurer.

(4) In the event of a Mandatory Control Level Event with respect to an insurer, the Commissioner shall take the actions required under § 35-4605 with respect to the insurer.

(b) For RBC Reports required to be filed by property and casualty insurers with respect to 1994, the following requirements shall apply in lieu of the provisions of §§ 35-4603, 35-4604, 35-4605, and 35-4606:

(1) In the event of a Company Action Level Event with respect to a domestic insurer, the Commissioner shall take no regulatory action hereunder.

(2) In the event of an Regulatory Action Level Event under § 35-4604(a)(1), (2), or (3) the Commissioner shall take the actions required under § 35-4603.

(3) In the event of an Regulatory Action Level Event under § 35-4604(a)(4), (5), (6), (7), (8), or (9) or an Authorized Control Level Event, the Commissioner shall take the actions required under § 35-4604 with respect to the insurer.

(4) In the event of a Mandatory Control Level Event with respect to an insurer, the Commissioner shall take the actions required under § 35-4605 with respect to the insurer. (Apr. 9, 1997, D.C. Law 11-233, § 14, 44 DCR 765.)

**Legislative history of Law 11-233.** — See note to § 35-4601.



## CHAPTER 47. HOSPITAL AND MEDICAL SERVICES CORPORATION REGULATION.

Sec.	Sec.
35-4701. Definitions.	35-4713. Reports.
35-4702. Exclusivity of provisions.	35-4714. Open enrollment.
35-4703. Applicability of other provisions.	35-4715. Conversion to a stock company.
35-4704. Application for certificate of authority.	35-4716. Conversion to a mutual company.
35-4705. Requirements for issuance of certificate of authority.	35-4717. Management contracts and service agreements.
35-4706. Surplus requirements.	35-4718. Directors and trustees.
35-4707. Filing of provider contracts.	35-4719. Reports to directors and trustees.
35-4708. Filing of subscriber contract forms and rates.	35-4720. Oversight role and fiduciary obligation of directors, officers, and employees.
35-4709. Reserves.	35-4721. Sanctions for violations.
35-4710. Investments.	35-4722. Appeals.
35-4711. Surplus notes.	35-4723. General transition provisions.
35-4712. Group subscriber contract standard provisions.	35-4724. Rules and regulations.

### § 35-4701. Definitions.

For the purposes of this chapter, the term:

(1) "Contractholder" means a person entering into a subscriber contract with a corporation.

(2) "Corporation" means a nonstock, nonprofit corporation which is subject to regulation and licensing under this chapter and which offers subscriber contracts as part of a hospital service plan, a medical service plan, or both.

(3) "Domestic corporation" means a corporation organized under the laws of the District, or formed or organized under an act of Congress.

(4) "Hospital service plan" means a plan for providing hospital and related services by hospitals and others which entitles a subscriber to certain hospital and related services, or to benefits and indemnification for such services.

(5) "Mayor" means the Mayor of the District of Columbia or the Mayor's designated agent.

(6) "Medical service plan" means a plan for providing medical services and related services by physicians and others which entitles a subscriber to certain medical and related services, or to benefits and indemnification for such services.

(7) "Plan" means a hospital service plan, a medical service plan, or a combination of the two.

(8) "Subscriber" means any person entitled to benefits under the terms and conditions of a subscriber contract.

(9) "Subscriber contract" means a written group or individual contract which is issued to a contractholder by a corporation which provides for subscriber participation in a hospital service plan, a medical service plan, or a combination of the two.

(10) "Subsidiary" means an affiliate controlled by a corporation directly or indirectly through 1 or more intermediaries.

(11) "Surplus" means the amount by which all admitted assets of the corporation exceed its liabilities, inclusive of the reserves required pursuant to § 35-4709. (Apr. 9, 1997, D.C. Law 11-245, § 2, 44 DCR 1158.)

**Legislative history of Law 11-245.** — Law 11-245, the "Hospital and Medical Services Corporation Regulatory Act of 1996," was introduced in Council and assigned Bill No. 11-780, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-505 and transmitted to both Houses of Congress for its review. D.C. Law 11-245 became law on April 9, 1997.

## § 35-4702. Exclusivity of provisions.

A corporation organized under the laws of the District of Columbia, or any state, or chartered by act of the Congress of the United States and issuing subscriber contracts in the District of Columbia shall be governed by this chapter and shall be exempt from all other provisions of District of Columbia law governing insurance, except as specifically referred to herein. No insurance law hereafter enacted by the District of Columbia shall be deemed to apply to such a corporation unless it is specifically referred to therein or unless such law represents an amendment or replacement of an insurance law made applicable to such corporations pursuant to § 35-4703. Any regulations promulgated by the Mayor to implement the provisions of any law made applicable to such a corporation by this chapter shall also apply to such a corporation. (Apr. 9, 1997, D.C. Law 11-245, § 3, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4703. Applicability of other provisions.

(a) A corporation governed by this chapter shall also be subject to the following other provisions of District of Columbia insurance law, including any amendments or replacements thereof hereafter enacted:

(1) Sections 35-101, 35-102, and 35-106, referring to general provisions of insurance regulation;

(2) Section 35-107, referring to general provisions of insurance regulation;

(3) Sections 35-203 and 35-204, referring to delivery (with each policy issued) of a copy of the insured's application, and to the principal office, books, and records of insurance companies;

(4) Subchapter III of Chapter 2 of this title, referring to prohibition against discrimination in the provision of insurance on the basis of an AIDS test;

(5) Sections 35-301 and 35-302, referring to the applicability of, and definitions in, the Life Insurance Act;

(6) Sections 35-401, 35-402, 35-403, 35-405, 35-408, 35-409, 35-410(b), 35-411 through 35-417, 35-422 and 35-424 through 35-432, governing, in part, fees chargeable to, certificates of authority for, publication of false statements by, and licensing of agents acting for life insurance companies;

(7) Sections 35-518 through 35-520, 35-524, and 35-530 through 35-536, referring, in part, to the prohibitions against discrimination, securities,

operations, and policy provisions restricting access to optometrists and psychologists by life insurance companies;

(8) Sections 35-601 through 35-604, 35-606, 35-607, 35-609, 35-627, 35-629, 35-630, 35-634, 35-636, 35-637, and 35-640 through 35-649, referring, in part, to articles of incorporation, election of officers, permissible investments, bookkeeping, and consolidation/merger of domestic life insurance companies;

(9) Sections 35-801 and 35-802, governing penalties for violations and severability with respect to the provisions cited in paragraphs 5 through 8 of this subsection;

(10) Sections 35-1101 through 35-1105, requiring that certain individual and group health insurance policies cover a newborn child from the moment of birth;

(11) Chapter 19A of this title, creating the District of Columbia Life and Health Insurance Guarantee Association and authorizing it to assume, guarantee, and reinsure any policy issued by a member insurer which becomes potentially unable to fulfill its contractual obligations;

(12) Chapter 23 of this title, requiring certain group and individual health insurance policies to provide coverage for the medical and psychological treatment of alcohol abuse, drug abuse, and mental illness;

(13) Chapter 24 of this title, requiring a group or individual health insurance policy issued more than 120 days after March 7, 1991, to cover certain preventive cancer screens for women;

(14) Chapter 26 of this title, authorizing the Mayor to issue regulations establishing specific standards for Medicare supplement insurance policies;

(15) Chapter 27 of this title, establishing the Insurance Regulatory Trust Fund and requiring each insurer doing business in the District to deposit in the Fund a percentage amount to be used to defray expenses of the Insurance Administration;

(16) Chapter 28 of this title, authorizing and regulating delinquency proceedings by the Commissioner of Insurance and Securities in the Superior Court of the District of Columbia against certain insurers;

(17) Chapter 30 of this title, establishing licensing and other requirements for managing general agents of certain insurers;

(18) Chapter 31 of this title, establishing licensing and other requirements for the assumed reinsurance business;

(19) Chapter 32 of this title, requiring insurers to file with the Mayor an accountant-prepared annual audit and other reports;

(20) Sections 35-3301 through 35-3303, governing the circumstances under which a domestic insurer may obtain a credit for reinsurance ceded to another insurer;

(21) Chapter 34 of this title, governing an insurer's filing with the Mayor and the National Association of Insurance Commissioners ("NAIC") of an annual financial statement;

(22) Sections 35-3501 through 35-3503, establishing standards for determining whether the continued operation of any insurer transacting business in the District might be hazardous to creditors, the general public, or policyhold-



ers, and authorizing the Mayor to order certain corrective actions after making such a determination;

(23) Chapter 36 of this title, governing examinations by the Mayor or any person subject to the District's insurance laws;

(24) Chapter 37 of this title, governing certain acquisition, investment, security issuance, and other activities in the insurance industry, requiring the registration of insurers that are part of an insurance holding company system, regulating transactions within such a system, regulating the management of domestic insurers in such a system, and authorizing the Mayor to conduct examinations of insurers that are part of such a system;

(25) Section 35-3801, requiring the submission to the Mayor of an annual opinion by a qualified actuary; and

(26) Chapter 26 of Title 47, requiring an annual license or certificate of authority from the Commissioner of Insurance and Securities for each insurer doing business in the District, requiring the filing of an annual statement by each such insurer, and imposing a tax on each such insurer's at-risk business in the District.

(b) Reference in the provisions cited in subsection (a) of this section to "insurers", "companies", or similar terms shall be deemed to include reference to a corporation governed by this chapter. (Apr. 9, 1997, D.C. Law 11-245, § 4, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4704. Application for certificate of authority.

(a) No corporation subject to the provisions of this chapter, whether organized pursuant to the laws of the District of Columbia, or of any state, or by act of the Congress of the United States, shall issue subscriber contracts until the Mayor has authorized it to do so by issuance of a certificate of authority.

(b) Application for such certificate of authority shall be made on forms to be supplied by the Mayor containing such information as the Mayor shall deem necessary. Each application for such certificate of authority, including each application for renewal, shall contain payment of a fee of \$200 to the District of Columbia, which shall be collected by the Commissioner of Insurance and Securities and shall be accompanied by copies of the following documents, duly certified by an executive officer of such corporation:

(1) Articles of incorporation, with all amendments thereto;

(2) Bylaws, with all amendments thereto;

(3) Each contract form executed or proposed to be executed by and between the corporation and any hospital, physician, or other medical service provider embodying the terms under which hospital and medical service is to be furnished to subscribers;

(4) Each form of subscriber contract issued or proposed to be issued, together with a table of rates charged, or proposed to be charged, including actuarial justifications, to subscribers;

(5) A financial statement of the corporation, which shall include the amount of each contribution paid or agreed to be paid to the corporation for

working capital, the name or names of each contributor, and the terms of each contribution;

(6) A risk-based capital report prepared in the manner prescribed by any risk-based capital ("RBC") regulations for hospital and medical services corporations promulgated by the Mayor;

(7) A list of the names and addresses and biographical information for the members of the board of directors, or board of trustees, and for the officers of the corporation;

(8) A statement of the geographical area in which the corporation proposes to operate; and

(9) Any other information or documents the Mayor deems necessary to assure compliance with this chapter.

(c) In addition, if the applicant is a foreign corporation:

(1) It shall provide the Mayor with an instrument authorizing service of process on the Mayor in accordance with § 35-423;

(2) It shall satisfy the Mayor that the corporation is duly organized under the laws of the state under whose laws it professes to be organized, and is authorized to do the business it is transacting or proposes to transact; and

(3) It shall satisfy the Mayor that its funds are invested in accordance with the laws of its domicile and in securities or property which afford a degree of financial security substantially equal to that required for a corporation organized under the laws of the District of Columbia, and that it has a surplus at least equal to that required to be maintained by corporations authorized to do business pursuant to the provisions of this chapter. (Apr. 9, 1997, D.C. Law 11-245, § 5, 44 DCR 1158.)

**Legislative history of Law 11-245** — See note to § 35-4701.      referred to in (c), was repealed March 21, 1995, by § 12 of D.C. Law 10-233.

**References in text.** — Section 35-423, re-

## § 35-4705. Requirements for issuance of certificate of authority.

The Mayor shall issue a certificate of authority to each applicant upon the payment of the \$200 fee provided for in § 35-4704(b), and upon being satisfied that:

(a) The applicant has been organized bona fide for the purpose of establishing, maintaining, and operating a hospital service plan, a medical service plan, or combination of the two;

(b) Each contract executed, or proposed to be executed, by the applicant and any hospital, physician, or other medical provider for the furnishing of hospital or medical services to subscribers obligates, or will when executed obligate, each hospital, physician, or other similar service provider which is a party thereto to render the service to which each subscriber may be entitled under the terms and conditions of the various subscriber contracts issued, or proposed to be issued, by the applicant;

(c) Each subscriber contract issued, or proposed to be issued, in the District of Columbia is in a form approved by the Mayor, and that the rate

charged, or proposed to be charged, for each form of such contract is approved by the Mayor as not being excessive, inadequate, or unfairly discriminatory in relation to the services and benefits offered; provided, that rates for experience rated groups need not, in accordance with § 35-4708(c), be filed with the Mayor;

(d) The applicant has a surplus of an amount equal to or greater than that required under § 35-4706, or the amount determined to be necessary pursuant to application of any risk-based capital regulations for hospital and medical services corporations promulgated by the Mayor; and

(e) The applicant has made provision for compliance with the open enrollment requirements of § 35-4714, including the providing of other public services in the District of Columbia as required in § 35-4714. (Apr. 9, 1997, D.C. Law 11-245, § 6, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4706. Surplus requirements.

(a) At the time of issuance of a certificate of authority under this chapter and at all times thereafter until risk-based capital regulations for hospital and medical services corporations are promulgated, a corporation must possess surplus in an amount which is the greater of \$5,000,000 or 8.0% of the total amount of premiums for insured risk received by the corporation in the preceding calendar year. The total amount of premiums for insured risk shall not include premiums collected for federal health benefit programs that have a separate reserve fund held by the federal government.

(b) The surplus requirement of 8.0% shall be phased-in following April 9, 1997 as follows:

(1) Year 1 — 40% of the surplus requirement in subsection (a) of this section;

(2) Year 2 — 60% of the surplus requirement in subsection (a) of this section;

(3) Year 3 — 80% of the surplus requirement in subsection (a) of this section; and

(4) Year 4 — 100% of the surplus requirement in subsection (a) of this section.

(c) The Mayor shall have the authority to require the differentiation of the corporation's activities into risk and nonrisk business for the purpose of determining the corporation's income that is derived from premiums for insured risk and from other sources.

(d) Notwithstanding the provisions of subsection (a) of this section, at the time of issuance of a certificate of authority under this chapter and at all times thereafter, a corporation shall be subject to the provisions of any risk-based capital regulations for hospital and medical services corporations promulgated by the Mayor, and must maintain at all times such surplus as is determined to be necessary under those regulations. (Apr. 9, 1997, D.C. Law 11-245, § 7, 44 DCR 1158.)



**Legislative history of Law 11-245.** — See note to § 35-4701.

### § 35-4707. Filing of provider contracts.

(a) A corporation holding a certificate of authority under this chapter may enter into contracts with licensed hospitals, licensed physicians, and other duly licensed medical services providers.

(b) A copy of each contract form that a corporation, referred to in subsection (a) of this section, has with licensed hospitals, licensed physicians, and other duly licensed medical services providers shall be filed with the Mayor. (Apr. 9, 1997, D.C. Law 11-245, § 8, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

### § 35-4708. Filing of subscriber contract forms and rates.

(a) *Contract form filings.* — (1) The form and content of all subscriber contracts between corporation and its contractholders issued in the District of Columbia, including any group certificates and any riders, endorsements, amendments, or other forms made a part of the subscriber contract, shall, at all times, be subject to the prior approval of the Mayor.

(2) The Mayor shall disapprove a proposed form of subscriber contract if the form contains provisions which are unjust, unfair, inequitable, inadequate, misleading, or deceptive, which encourage misrepresentation of the coverage, or which are otherwise not in compliance with applicable provisions of this chapter.

(3) Each subscriber contract, group certificate, or other contract form shall plainly state the services, benefits, and indemnification to which the subscriber is entitled as well as the services, benefits, and indemnification to which the subscriber is not entitled.

(4) Each proposed form of a subscriber contract shall be on file for a waiting period of 60 days before it becomes effective. When, in the Mayor's opinion, a filing is not accompanied by the information needed to support it and the Mayor does not have sufficient information to determine whether the filing meets the requirements of this section, a corporation shall be required to furnish the needed information. In such event the waiting period shall be suspended and shall recommence as of the date the information is furnished. Upon written application by the corporation, the Mayor may authorize a filing which the Mayor has reviewed to become effective before the expiration of the waiting period or any extension thereof, or at any later date. A filing shall be deemed approved unless disapproved by the Mayor within the waiting period or any extension thereof requested by the corporation.

(b) *Rate filings for individual subscriber contracts.* — All rates for individual subscriber contracts issued in the District of Columbia shall be subject to the prior approval of the Mayor. Each proposed rate filing shall be on file for a waiting period of 60 days before it becomes effective. When, in the Mayor's opinion, a rate filing is not accompanied by the information needed to

support it and the Mayor does not have sufficient information to determine whether the rate filing meets the requirements of this section, a corporation shall be required to furnish the needed information. In such event, the waiting period shall be suspended and shall recommence as of the date the information is furnished. Upon written application by the corporation, the Mayor may authorize a rate filing which the Mayor has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed approved unless disapproved by the Mayor within the waiting period or any extension thereof requested by the corporation. All approved rate filings for individual subscriber contracts submitted in other jurisdictions shall be filed with the Mayor for information purposes only.

(c) *Rate filings for group subscriber contracts.* — All rates for group subscriber contracts, other than experience rated groups, issued in the District of Columbia shall be filed with the Mayor no later than the date on which a corporation proposes to make such rates effective. The rate filing shall be subject to review and disapproval by the Mayor for a period of 60 days after the filing date. If not disapproved before the expiration of the review period or any extension thereof requested by the corporation, the filing shall be deemed approved. Any disapproval under this subsection shall be applied retrospectively to the date the corporation made such rates effective. Upon application by the corporation, the Mayor may affirmatively approve a filing prior to the end of the review period. All approved rate filings for group subscriber contracts, other than experience rated groups, submitted in other jurisdictions shall be filed with the Mayor for information purposes only.

(d) *Contract form and rate filings generally.* — (1) Application for approval shall be made to the Mayor in the format, and with the information, that the Mayor requires.

(2) The Mayor may, at any time, require any corporation issued a certificate of authority under this chapter to demonstrate that its filings, including the terms and provisions of its subscriber contract forms, its rates, and its method for setting rates, are in compliance with this section, notwithstanding that the filings then in effect had previously been approved by the Mayor. Any subscriber contract forms and rates previously approved by the Mayor, but subsequently disapproved under this section, shall be considered disapproved on a prospective basis only from the date of such notice of disapproval, unless the corporation made a material misrepresentation in its contract form or rate filings.

(3) If at any time subsequent to the applicable waiting or review period provided for in this section, the Mayor finds that a filing does not meet the requirements of this section, the Mayor shall issue an order to the filer specifying in what respects the Mayor finds that the filing fails to meet the requirements of this section, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. The order shall not affect any subscriber contract, group certificate, or other contract made or issued prior to the expiration of the period set forth in the order. However, the Mayor may, prior to issuing the order and if requested by the filer, hold a hearing upon not less than 10 days written notice to the filer specifying the matters to be considered at the hearing.

(e) *Rate filings generally.* — (1) Rate filings shall be inclusive of all rates, rating plans, and other documents utilized by a corporation to determine rates.

(2) Rates shall not be excessive, inadequate, or unfairly discriminatory in relation to the services and benefits offered.

(3) In determining whether to disapprove a rate filing, the Mayor shall give due consideration to past and prospective loss experience within and outside the District of Columbia, to underwriting practice and judgment to the extent appropriate, to a reasonable margin for surplus needs, to past and prospective expenses both nationwide and within the District of Columbia, and to all other relevant factors within and outside the District of Columbia. In establishing the rates to be charged individuals with open enrollment subscriber contracts, including individual conversion subscriber contracts, the revenue which would have been otherwise collected by the District of Columbia government through the imposition of the 1% premium tax pursuant to § 35-4714(j), but which a corporation has contributed to a Rate Stabilization Fund in accordance with § 35-4714(j)(1), shall be credited by the corporation to the benefit of this class of subscribers in an amount which assures competitive rates.

(f) *Transition provision for contract forms and rates.* — (1) As to any corporation heretofore existing and operating on the effective date of this act, and subject to § 35-4723, all subscriber contracts, group certificates, and other contracts issued in the District of Columbia after April 9, 1997, shall be on forms that have been filed and approved under this chapter. The requirement of this section shall not affect the validity of subscriber contracts, group certificates, and other contracts issued in the District of Columbia by such a corporation which are outstanding on April 9, 1997, and have not previously been filed with and approved by the Mayor, but these contracts shall be replaced, at the next contract anniversary date following April 9, 1997, by forms filed and approved under this chapter.

(2) As to any corporation heretofore existing and operating on April 9, 1997, and subject to § 35-4723, all rates applied to subscriber contracts after April 9, 1997, shall be such rates as have been filed and approved under this chapter. The requirements of this section shall not affect the validity of rates applied to subscriber contracts issued by such a corporation which are outstanding on April 9, 1997, and have not previously been filed with and approved by the Mayor, but these rates shall be replaced, at the next contract anniversary date following April 9, 1997, by rates filed and approved under this chapter.

(g) A corporation whose proposed form of subscriber contract or proposed contract rate has been disapproved by the Mayor may contest the Mayor's action in accordance with the procedures of § 35-4722. (Apr. 9, 1997, D.C. Law 11-245, § 9, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.



**§ 35-4709. Reserves.**

(a) Taking into consideration the nature of the policies issued by the corporation, a corporation shall establish and maintain pro rata gross unearned premium reserves, reserves for incurred but unpaid claims (both reported and unreported), reserves for expenses related to settlement of such claims, and other reserves as required for proper reporting of its financial condition or as required under the form of financial statements required of the corporation.

(b) The reserves required under subsection (a) of this section constitute a liability of the corporation in a determination of its financial condition. (Apr. 9, 1997, D.C. Law 11-245, § 10, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

**§ 35-4710. Investments.**

Notwithstanding any provision of § 35-634, as made applicable by § 35-4703(8), and notwithstanding any other provision of this chapter:

(1) Without the Mayor's prior written consent, a corporation's aggregate investments in real estate pursuant to § 35-634(d)(1)(A) through (F), shall not at any time exceed 20% of the amount of the corporation's admitted assets as reported on the corporation's annual financial statement most recently filed with the Mayor.

(2) A corporation's investments in real estate pursuant to § 35-634(d)(1)(A) through (F), shall in no event exceed the actual cost plus the capitalized value (less normal depreciation) of the permanent improvements.

(3) For real estate owned by a corporation pursuant to § 35-634(d)(1)(A) on April 9, 1997, the corporation may, as its option, determine admitted asset value in accordance with an appraisal most recently conducted prior to the effective date of this act; provided, that the appraisal is acceptable to the Mayor. The difference between the admitted asset value as so identified and the book value (equal to the historical cost, less the value of encumbrances and accumulated depreciation) shall be accounted for as an unrealized gain and credited to reserves and unassigned funds and shall be amortized and charged to reserves and unassigned funds. Thereafter, such real estate shall be valued, for purposes of the financial statements required by § 35-3401, at such appraised value, less accumulated amortization, plus the capitalized value of permanent improvements, less normal depreciation. Normal depreciation on the capitalized value of permanent improvements shall be charged as an expense in the underwriting and investment exhibit to the corporation's annual financial statement.

(4) A corporation shall not invest in or otherwise acquire any affiliate or subsidiary, as those terms are defined in § 35-3701, except in accordance with the following:

(A) The business of the affiliate or subsidiary must be directly related to the operation of the corporation or the administration of a health benefits program.

(B)(i) The corporation must submit a statement of proposed action to the Mayor before the corporation:

(I) Creates, invests in, or otherwise acquires any affiliate or subsidiary; or

(II) Alters the legal structure, purpose, or ownership of the corporation or any affiliate or subsidiary of the corporation.

(ii) The statement of proposed action required under this subparagraph shall be filed by the corporation not less than 30 days prior to the effective date of the proposed action.

(iii) The statement of proposed action shall be deemed approved unless disapproved by the Mayor within the 30-day waiting period or any extension thereof requested by the corporation.

(iv) The corporation shall not be required to submit a statement of proposed action to the Mayor under this subparagraph when the proposed action is required to be reported to the Mayor pursuant to Chapter 37 of this title. (Apr. 9, 1997, D.C. Law 11-245, § 11, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4711. Surplus notes.

(a) A domestic corporation may borrow or assume a liability for the repayment of a sum of money under a written agreement which provides that the loan or advance shall be repaid only out of surplus of the corporation in excess of such minimum surplus as is stipulated in and by the agreement and if the surplus of the corporation after such payment would meet or exceed the level of surplus the corporation is required to maintain by the Mayor under the laws or regulations of the District of Columbia. The rate of interest specified in such an agreement may be adjusted no more frequently than annually to provide for a rate not exceeding the one-year treasury bill rate plus 3% at the time of adjustment. At the time the loan or advance is made, the interest rate shall not exceed the one-year treasury bill rate plus 3% annum.

(b) Subject to approval by the Mayor, the interest rate on all loans or advances existing on April 9, 1997 can be amended to the rate as permitted in this section with the mutual agreement of the corporation and the lender.

(c) A domestic corporation shall, before entering into an agreement for a loan or advance permitted under this section, file with the Mayor a statement of the purpose of the loan or advance and a copy of the proposed agreement. The Mayor shall disapprove any proposed agreement for a loan or advance if the Mayor finds that the loan or advance is unnecessary or excessive for the purpose intended; that the terms of the agreement are not fair and equitable to the parties and to other lenders, if any, to the corporation; that the information so filed by the corporation is inadequate; or that the terms of the agreement are not otherwise in compliance with this section.

(d) Any loan or advance to a domestic corporation shall be repaid by the corporation when, and to the extent, no longer reasonably necessary for the purpose originally intended; provided, that no repayment of such a loan or advance shall be made unless approved in advance by the Mayor.

(e) Nothing in this section shall be construed to mean that a corporation may not borrow money otherwise than by a loan or advance, but the amount so borrowed with accrued interest thereon shall be carried by the corporation as a liability. (Apr. 9, 1997, D.C. Law 11-245, § 12, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## **§ 35-4712. Group subscriber contract standard provisions.**

No group subscriber contract shall be issued in the District of Columbia by a corporation unless it contains in substance the following provisions, or provisions which in the opinion of the Mayor are more favorable to the subscribers, or at least as favorable to the subscribers and more favorable to the group contractholder; except, that if any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of contract, the corporation, with the approval of the Mayor, shall omit from such contract any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the contract consistent with the coverage provided by the contract:

(1) A provision that the group contractholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the contract shall continue in force, unless the group contractholder has given the corporation written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the contract; except, that the contract may provide that the contractholder shall be liable to the corporation for the payment of a pro rata premium for the time the contract was in force during such grace period;

(2) A provision that the validity of the contract shall not be contested except for nonpayment of premiums, fraudulent misstatements, noncompliance with contractual provisions and noncompliance with eligibility requirements after it has been in force for 2 years from its date of issue;

(3) A provision that no statement made by any subscriber under the contract relating to insurability may be used in contesting the validity of the coverage with respect to which such statement was made after the subscriber's coverage has been in force for a period of 2 years nor unless it is contained in a written instrument signed by the subscriber, except that this provision need not preclude the assertion at any time of defenses based upon the subscriber's lack of eligibility for coverage under the contract or upon other provisions in the contract unrelated to insurability;

(4) A provision that a copy of the application, if any, of the contractholder shall be attached to the contract when issued, that all statements made by the contractholder or by the subscriber shall be deemed representations and not warranties, and that no statement made by any subscriber may be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of the death or incapacity of the subscriber, to the individual's beneficiary or personal representative;



(5) A provision setting forth the conditions, if any, under which the corporation reserves the right to require a person eligible for coverage to furnish evidence of individual insurability satisfactory to the corporation as a condition to part or all of the individual's coverage;

(6) A provision that the corporation shall issue to the contractholder for delivery to each subscriber a certificate setting forth a statement as to the coverage to which that person is entitled, to whom benefits are payable, and a statement as to any family member's or dependent's coverage;

(7) A provision that written notice of a claim must be given to the corporation within 15 months after the occurrence or commencement of the date of a service covered by the contract and that failure to give notice within such time shall not invalidate or reduce any claim if it is shown that the contractholder was legally incapacitated prior to the expiration of the 15-month claim filing period;

(8) A provision that the corporation shall furnish to the subscriber under the contract, or to the contractholder for delivery to the subscriber, such forms as are usually furnished by it for filing a claim; and that if such forms are not furnished before the expiration of 20 days after the corporation received notice of any claim under the contract, the person making the claim shall be deemed to have complied with the claims filing requirements of the contract;

(9) A provision that all benefits and indemnification payable under the contract must be paid not more than 60 days after receipt of all necessary information and documentation or proof;

(10) A provision that the corporation has the right to examine the person for whom a claim is so filed under the contract as often as it may reasonably require during the pendency of the claim and also has the right to conduct an autopsy in case of death if doing so is not prohibited by law;

(11) A provision that no action at law or in equity may be brought to recover on the contract before the expiration of 60 days from the date a claim has been filed in accordance with the claim filing requirements of the contract or after a period of 3 years from the last date on which a claim is required to be filed under the claim filing requirements of the contract; and

(12) A provision that allows subscribers who leave such groups to convert, without evidence of insurability, to an individual subscriber contract providing an adequate level of coverage and in accordance with any standards the Mayor prescribes pursuant to § 35-4714(g). (Apr. 9, 1997, D.C. Law 11-245, § 13, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4713. Reports.

(a) In addition to the annual statement required by § 35-3401, the Mayor:

(1) May require each corporation to file on a quarterly or other basis any additional reports, exhibits, or statements the Mayor considers necessary to furnish all information concerning the condition, solvency, experience, transactions, or affairs of the corporation. The Mayor may establish deadlines for

submitting any additional reports, exhibits, or statements and may require their verification by any officer or officers of the corporation the Mayor designates; and

(2) Shall require each corporation to file annually, on or before June 1, a report, signed by 2 of its principal officers, showing:

(A) The number of the District of Columbia contractholders and subscribers by the following type of contract or its equivalent:

- (i) Individual, open enrollment;
- (ii) Individual conversion subscribers;
- (iii) Group subscribers, as defined by regulation;
- (iv) Medigap and Medicare supplements; and
- (v) Associations;

(B) Total subscriber income, benefit, and indemnification payments for the types of contracts listed in paragraph (1) of this subsection, with a specific breakdown by type of contract if requested by the Mayor; and

(C) Expenditures for providing public services, in addition to open enrollment, in the District of Columbia. (Apr. 9, 1997, D.C. Law 11-245, § 14, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4714. Open enrollment.

(a) A corporation issued a certificate of authority under this chapter shall make available to citizens of the District of Columbia an open enrollment program under the terms set forth in this section.

(b) As used in this section, the term:

(1) “Comprehensive individual subscriber contracts” means subscriber contracts, conforming to the requirements of subsection (g) of this section, which are issued to provide basic hospital and medical services, or to provide benefits and indemnification for such services.

(2) “Open enrollment subscriber contracts” means comprehensive individual subscriber contracts issued pursuant to an open enrollment program by a corporation which has a certificate of authority under this chapter and provides coverage to individuals.

(c) A corporation’s open enrollment program shall provide for the issuance of open enrollment subscriber contracts without imposition by the corporation of underwriting criteria whereby coverage is denied or subject to cancellation or nonrenewal, in whole or in part, because of an individual’s age, health history, medical history, employment status, or, if employed, industry or job classification.

(d) A corporation’s open enrollment program shall make open enrollment subscriber contracts available to any individual residing in the District of Columbia, except, that this requirement shall not apply to any individual who is eligible for coverage as an employee of an employer which provides, in whole or in part, basic hospital and medical services, benefits, and indemnification coverage to its employees.

(e) A corporation's open enrollment program shall be available on a year-round basis.

(f) A corporation must prominently advertise the availability of its open enrollment subscriber contracts quarterly in a newspaper or newspapers of general circulation throughout the District of Columbia. The content and format of such advertising shall be filed with the Mayor at least 60 days prior to use.

(g) The Mayor may prescribe minimum standards to govern the contents of comprehensive individual subscriber contracts issued pursuant to this section. Such minimum standards shall ensure that these contracts provide hospital and medical services, or benefits and indemnification for a comprehensive range of health care needs without qualifying exclusions that fail to protect the subscriber under normal circumstances. Such minimum standards shall also ensure that the option of obtaining comprehensive individual subscriber contract coverage is made available to all individuals included within the definition of "open enrollment subscriber contracts" in subsection (b)(2) of this section.

(h) The Mayor may prescribe minimum standards specifically to govern the content of comprehensive individual subscriber contracts issued to individuals who have converted from group subscriber contracts to individual coverage because of termination of the individual's eligibility for group coverage.

(i) A corporation issued a certificate of authority under this chapter shall provide other public services in the District of Columbia consisting of health-related educational support for residents of the corporation's service area who, based upon such educational support, may experience a lesser need for hospital and medical services, or benefits and indemnification for such services.

(j) As long as a corporation maintains an open enrollment program as required by this section, the rate of tax applied to the corporation's net subscriber premium receipts from District of Columbia risks ("premium tax rate") shall be 1%, rather than the percentage otherwise applicable pursuant to § 47-2608.

(1) A corporation may elect to pay the 1% premium tax rate or contribute the amount otherwise so paid to a separately established Rate Stabilization Fund. The Rate Stabilization Fund shall be used solely to subsidize open enrollment contracts to assure competitive rates. The corporation shall provide documentation to the Mayor of the existence of a Rate Stabilization Fund and identify the amount of the subsidy from the Fund for open enrollment rates in the rate filings required by § 35-4708.

(2) A corporation's annual statement pursuant to § 35-3401, shall include documentation of its efforts to substantiate the need for a 1% premium tax rate as an incentive to maintain an open enrollment program. Such documentation shall include the number of subscribers participating in its open enrollment program, the premiums it charges for comprehensive individual subscriber contracts, a description of its efforts to provide the public services required by subsection (i) of this section, and such other documentation as the Mayor may require. If the Mayor finds that the documentation provided by a corporation



does not substantiate the 1% premium tax rate, the Mayor shall provide written notice to the corporation of this finding no later than April 1 of the same year, and the corporation shall pay the premium tax rate established in § 47-2608, except as provided in paragraph 3 of this subsection.

(3) Within 30 days after the date of the written notice required by paragraph (2) of this subsection, a corporation may make a written request for a hearing on the Mayor's findings that the corporation failed to substantiate the imposition of a 1% premium tax rate by delivering the request to the Department of Insurance and Securities Regulation. The hearing shall commence in not fewer than 10 days nor more than 30 days from the date on which the request for hearing is received by the Department of Insurance and Securities Regulation. The hearing and its disposition shall be governed by the rules for contested cases set forth in chapter 1 of title 26 (Insurance) of the District of Columbia Municipal Regulations (26 DCMR chapter 1). Any premium tax payments that become due during the time that the Mayor's finding is being contested shall be paid at the 1% premium tax rate. If the corporation loses or withdraws the case, it shall reimburse the District the difference between the payments made at the 1% premium tax rate and the payment that it would have made at the rate established in § 47-2608.

(k) Upon the date of discontinuance of its open enrollment program as defined in this section, the 1% premium tax rate shall no longer apply to the corporation and the corporation's net subscriber premium receipts from District of Columbia risks shall be taxed at the rate established in § 47-2608.

(l) Any proposed rates filed by a corporation with the Mayor pursuant to § 35-4708 which are to be applied to open enrollment subscriber contracts, including individual conversion subscriber contracts, shall include a factor crediting for the benefit of this class of subscribers in an amount which assures competitive rates, the revenue which would have been otherwise collected by the District of Columbia government as a premium tax pursuant to § 35-4714(j). (Apr. 9, 1997, D.C. Law 11-245, § 15, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4715. Conversion to a stock company.

(a) A corporation issued a certificate of authority under this chapter, whether incorporated under the laws of the District of Columbia or act of the Congress of the United States, may convert to a for-profit stock insurance company subject to provisions of this chapter, under a plan and procedure approved by the Mayor. Upon consummation of the plan, the resulting stock insurance company shall fully comply with the requirements of chapters 3 through 8 of this title as set forth in subsection (b)(2) of this section. For the purpose of such conversion, the owners of the corporation shall be contractholders and surplus note holders, if there are any surplus notes.

(b) The Mayor shall approve any proposed plan or procedure for conversion

to a for-profit insurance company unless the Mayor finds that the plan or procedure:

(1) Is inequitable to contractholders of the converting corporation or to the public;

(2) Fails to comply with §§ 35-605, 35-610 through 35-615, 35-621, 35-624, 35-628, 35-631, and 35-638;

(3) Provides that any part of the assets or surplus of the corporation will inure directly or indirectly to any officer, director, or trustee of the corporation; or

(4) Does not ensure that the resulting stock insurance company will possess capital and surplus in an amount sufficient to:

(A) Comply with the capital and stock surplus requirements for a stock life insurance company under § 35-609; and

(B) Provide for the security of the resulting stock insurance company's contractholders.

(c) Any corporation that becomes a for-profit insurance company under this section shall not be deemed to have abandoned its corporate status by virtue of the conversion, unless the conversion plan expressly provides to the contrary.

(d) The certificate of authority, agent appointments, contract forms, and other filings which are in existence at the time of the conversion shall continue in full force and effect upon conversion if the resulting corporation at all times remains qualified to issue subscriber contracts in the District of Columbia.

(e) All outstanding subscriber contracts of the converting corporation shall remain in full force and effect and need not otherwise be endorsed unless ordered by the Mayor.

(f) A corporation issued a certificate of authority under this chapter that offers an open enrollment program under § 35-4714 may, directly or through a subsidiary, continue to offer such program notwithstanding its conversion to a stock company. However, the premium tax rate imposed on the company shall be in accordance with § 47-2608.

(g) The Mayor may conduct a hearing concerning the proposed conversion of a corporation into a for-profit stock insurance company before deciding whether to approve it.

(h) This section shall not apply to the conversion of a corporation to a stock insurance company that results from a judicial order issued pursuant to a rehabilitation or reorganization of the corporation. (Apr. 9, 1997, D.C. Law 11-245, § 16, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4716. Conversion to a mutual company.

(a) A corporation issued a certificate of authority under this chapter, whether incorporated under the laws of the District of Columbia or act of the Congress of the United States, may convert to a mutual insurance company subject to the provisions of this chapter under a plan and procedure approved by the Mayor. Upon consummation of the plan, the resulting mutual insurance

company shall fully comply with the requirements of the Life Insurance Act as set forth in subsection (b)(2) of this section. For the purpose of such conversion, the owners of the corporation shall be the contractholders and surplus note holders, if there are any surplus notes.

(b) The Mayor shall approve any proposed plan or procedure for conversion to a mutual insurance company unless the Mayor finds that the plan or procedure:

(1) Is inequitable to contractholders of the converting corporation or to the public;

(2) Fails to comply with §§ 35-616, 35-617, 35-632, 35-633, and 35-646;

(3) Provides that any part of the assets or surplus of the converting corporation will inure directly or indirectly to any officer, director, or trustee of the converting corporation; or

(4) Does not ensure that the resulting mutual insurance company will possess a surplus in an amount sufficient to:

(A) Comply with the surplus required under § 35-1516; and

(B) Provide for the security of the resulting insurance company's contractholders.

(c) The conversion plan must provide for the resulting mutual insurance company to assume, without reincorporation, all assets and liabilities of the converting corporation.

(d) Any corporation that becomes a mutual insurance company under this section shall not be deemed to have abandoned its corporate status by virtue of the conversion, unless the conversion plan expressly provides to the contrary.

(e) The conversion plan must provide for definite conditions to be fulfilled upon which fulfillment of the mutualization will be deemed effective.

(f) The certificate of authority, agent appointments, contract forms, and other filings which are in existence at the time of the conversion shall continue in full force and effect upon conversion if the resulting mutual insurance company at all times remains qualified to issue subscriber contracts in the District of Columbia.

(g) All outstanding subscriber contracts of the converting corporation shall remain in full force and effect and need not otherwise be endorsed unless ordered by the Mayor.

(h) A corporation issued a certificate of authority under this act that offers an open enrollment program under § 35-4714 may, directly or through a subsidiary, continue to offer such program notwithstanding its conversion to a mutual company. However, the premium tax rate imposed on the company shall be in accordance with § 47-2608.

(i) The Mayor may conduct a hearing concerning the proposed conversion of a corporation into a mutual insurance company before deciding whether to approve it.

(j) Notwithstanding subsection (e) of this section, the converting corporation shall have such period of time to complete its conversion to a mutual insurance company as specified in any order of the Mayor approving the proposed conversion.

(k) This section shall not apply to the conversion of a corporation to a mutual insurance company that results from a judicial order issued pursuant



to a rehabilitation or reorganization of the corporation. (Apr. 9, 1997, D.C. Law 11-245, § 17, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

### § 35-4717. Management contracts and service agreements.

(a) Any management contract or service agreement which delegates to any person or organization all or part of a substantial management duty, function, or other form of control of a corporation, such as adjustment of claims, production of business, investment of assets, or general servicing of the corporation's business, must be filed with the Mayor at least 30 days before the effective date of the contract or agreement.

(b) This requirement in subsection (a) of this section shall not apply to personal services contracts of executives of a corporation. Nor shall that requirement apply to contracts by groups of affiliated companies for shared services, such as maintenance, security, purchasing, and the like, where costs to the individual member companies are charged on an actually incurred or pro rata basis, except that these contracts shall be in writing.

(c) The Mayor shall disapprove any management contract or service agreement filed pursuant to subsection (a) of this section if, at any time, the Mayor finds one or more of the following:

(1) That the service or management charges are based upon criteria unrelated either to the managed corporation's profits or the reasonable, customary, and usual charges for such services, or are based on factors unrelated to the value of such services to the corporation;

(2) That management personnel or other employees of the corporation are to perform functions and receive any remuneration therefor under the management contract or service agreement in addition to the compensation received by way of salary for their services directly from the corporation;

(3) That the management contract or service agreement would transfer:

(A) Substantial control of the corporation or the basic functions of the corporation's management; or

(B) Any of the powers vested in the board of directors or trustees by statute, the corporation's articles of incorporation, or its bylaws;

(4) That the management contract or service agreement contains provisions which would be clearly detrimental to the best interests of contractholders or subscribers of the corporation; or

(5) That the officers, directors, or trustees of the contractor under the management contract or service agreement are of bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons who have been involved in the improper manipulation of assets, accounts, or reinsurance.

(d) If the mayor disapproves any management contract or service agreement filed pursuant to subsection (a) of this section, written notice of the

reason for such action shall be given to the corporation, which may contest the Mayor's action in accordance with the procedures in § 35-4722.

(e) Any amendments to a management contract or service agreement shall be filed with the Mayor at least 30 days before they become effective. Any change in the officers, directors, or trustees of the contractor under a management contract or service agreement shall be reported to the Mayor within 10 days after such change occurs. Upon review of such amendments and changes, the Mayor may disapprove the management contract or service agreement in accordance with the provisions of subsections (c) and (d) of this section.

(f) Any management contract or service agreement filed pursuant to subsection (a) of this section, and any amendment thereto, shall be deemed approved unless disapproved by the Mayor within 30 days after it is filed with the Mayor. (Apr. 9, 1997, D.C. Law 11-245, § 18, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

## § 35-4718. Directors and trustees.

Notwithstanding § 35-3706(c)(3), or any other provision of District of Columbia insurance law referenced in § 35-4703, the following provisions shall apply to a domestic corporation issued a certificate of authority under this chapter:

(1) The board of directors or trustees shall consist of not less than 5 nor more than 21 members, who shall be elected by a majority of the members of the board. The term of a director or trustee shall be not less than 1 year nor more than 3 years, and shall be specified in the corporation's bylaws.

(2) The directors or trustees of a domestic corporation shall at all times include subscriber representatives.

(3) A majority of the board of directors or trustees shall at all times consist of members other than employees and officers of the corporation, or of any affiliate or subsidiary of the corporation.

(4) Not less than one-third of the members of the board of directors or trustees shall be residents of the District of Columbia.

(5) The articles of incorporation or bylaws of a domestic corporation shall state the number of directors or trustees necessary to constitute a quorum for conducting business at its meetings and the number of directors' or trustees' votes necessary to effect action on any matter presented for a vote of the board of directors or trustees. In regard to any matter involving conversion to a mutual or stock insurance company, or merger, consolidation, or other form of reorganization of the corporation, the affirmative vote of at least 80% of all directors or trustees shall be required to effect action by the board. (Apr. 9, 1997, D.C. Law 11-245, § 19, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

**§ 35-4719. Reports to directors and trustees.**

The officers or other management of a corporation issued a certificate of authority under this chapter shall report to its board of directors or trustees, no less often than quarterly, regarding any and all transactions or events that have, or are likely to have, a material impact on the operations or financial condition of the corporation. (Apr. 9, 1997, D.C. Law 11-245, § 20, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

**§ 35-4720. Oversight role and fiduciary obligation of directors, officers, and employees.**

(a) The Mayor shall promulgate regulations establishing the oversight role and fiduciary obligation of each member of the board of directors or trustees of a corporation issued a certificate of authority under this chapter. Such regulations shall require the corporation to adopt a code of conduct and compliance program for all board members, officers and employees of the corporation.

(b) A corporation issued a certificate of authority under this chapter shall file with the Mayor annually, on or before June 1, a copy of its bylaws which shall require the corporation's board of directors or trustees to adopt policies consistent with the provisions of the code of conduct and compliance program regulations promulgated by the Mayor. Any amendments to the bylaws shall be filed with the Mayor by the corporation within 30 days of adoption by the board. (Apr. 9, 1997, D.C. Law 11-245, § 21, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

**§ 35-4721. Sanctions for violations.**

(a) If the directors or trustees of a corporation issued a certificate of authority under this chapter knowingly violate, or knowingly permit any of the officers, employees, or agents of the corporation to violate, any provision of this chapter, any other provision of law made applicable to the corporation by this chapter, or any regulation promulgated under this chapter or such other provisions of law, the certificate of authority granted to the corporation may be suspended or revoked upon a determination of such violation by the Mayor.

(b) Forfeiture of monetary gain; civil money penalties.

(1) The Mayor may require a corporation issued a certificate of authority under this chapter, and any director, trustee, officer, employee, or agent of such a corporation, that the Mayor finds has willfully violated any provision of this chapter, any other provision of law made applicable to the corporation of by this chapter, or any regulations promulgated under this chapter or such other provision of law to forfeit any monetary gain derived thereby to the Treasurer of the District of Columbia or to any person who has suffered financial injury or damage as a result of the violation. Upon a determination of such violation



by the Mayor, the Mayor also may impose a civil penalty against a corporation in an amount not to exceed \$25,000 for each violation, and as to an individual an amount not to exceed \$5,000 for each type of violation, not to exceed \$25,000 in total for each type of violation.

(2) For the purposes of this section, the terms “violate” and “violation” denote any action, alone or with another or others, that involves causation, participation in, counseling, aiding, or abetting.

(3) A person or organization against whom a forfeiture or penalty has been imposed under this section may, within 30 days after service of written notice thereof by hand delivery or mail, make a written request for a hearing on such action by delivering the request to the Department of Insurance and Securities Regulation. The hearing shall commence in not fewer than 10 days nor more than 30 days from the date on which the request for a hearing is received by the Department of Insurance and Securities Regulation. The hearing and its disposition shall be governed by the rules for contested cases set forth in title 26 (Insurance) of the District of Columbia Municipal Regulations (26 DCMR).

(4) The resignation, separation, or termination of a director, trustee, officer, employee, or agent (including a separation caused by the liquidation of a corporation issued a certificate of authority under this chapter) shall not affect the jurisdiction and authority of the Mayor to issue any notice and proceed under this subsection against any such individual, if the notice is served before the end of the 3-year period beginning on the date on which the individual ceased to be a director, trustee, officer, employee, or agent.

(c) Whenever the Mayor determines that a corporation issued a certificate of authority under this chapter, or that a director, trustee, officer, employee, or agent of such a corporation has committed or is about to commit a violation of this chapter or of any rule, regulation, or order issued hereunder, the Mayor may issue an order directing such corporation or individual to cease and desist from violating or continuing to violate this chapter or any such rule, regulation, or order, subject to the notice, hearing, and other procedural requirements in subsection (b) of this section.

(d) The foregoing penalties and remedies shall be in addition to, and not in lieu of, any other penalty which may be imposed pursuant to any other provision of law which this chapter makes applicable to a corporation and its officers, directors, employees, and agents. This section shall not be construed to prevent any person financially damaged by a director, trustee, officer, employee, or agent of a corporation from bringing a separate cause of action in a court of competent jurisdiction.

(e) Whenever the Mayor determines that a corporation issued a certificate of authority under this chapter, or that a director, trustee, officer, employee, or agent of such a corporation, has willfully violated this chapter, the Mayor shall report such violation to the Corporation Counsel of the District of Columbia. Willful violations of this chapter shall be deemed misdemeanors, except where other provisions of this chapter or other provisions of law made applicable by this chapter provide for greater criminal liability. Prosecutions authorized by this section shall be upon information filed in the Superior Court of the District

of Columbia by the Corporation Counsel or any of his or her assistants. Any corporation convicted of a willful violation of this chapter shall be fined in an amount not to exceed \$50,000 for each violation. In addition to any fines or punishments imposed for violations of any other laws, any individual convicted of a willful violation of this chapter shall be fined in an amount not to exceed \$5,000 for each violation; or, if such violation involves the deliberate perpetration of a fraud upon the corporation, its subscribers, or the Mayor, imprisoned for not more than 1 year, or both. (Apr. 9, 1997, D.C. Law 11-245, § 22, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

### § 35-4722. Appeals.

If, within the time for approval, the Mayor sends notice of disapproval of the proposed form of any subscriber contract, of proposed contract rates, or of any management contract or service agreement required by this chapter to be approved by the Mayor, the affected corporation may contest the Mayor's decision. Any action to contest the Mayor's decision shall be initiated within 30 days from the date on which the notice of decision is served on the corporation by delivering a written request for a hearing to the Department of Insurance and Securities Regulation. The hearing shall commence in not fewer than 10 days nor more than 30 days from the date on which the action to contest the Mayor's decision is received by the Department of Insurance and Securities Regulation. The hearing and its disposition shall be governed by the procedures for contested cases in chapter 1 of title 26 (Insurance) of the District of Columbia Municipal Regulations (26 DCMR chapter 1). (Apr. 9, 1997, D.C. Law 11-245, § 23, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.

### § 35-4723. General transition provisions.

(a) In his or her sole discretion, the Mayor may provide, upon application and for good cause shown by a corporation in existence and operating in the District of Columbia on April 9, 1997, for a reasonable period of time for such corporation to comply with any requirement of this chapter.

(b) Notwithstanding any provisions to the contrary in Chapter 37 of this title, or this chapter, a transaction ongoing as of April 9, 1997, which would otherwise be subject to the notice requirements of § 35-3706(a), shall be filed with the Mayor for approval no later than 90 days after April 9, 1997, only if the transaction involves more than 3% of the amount of admitted assets or more than 20% of the amount of surplus of the corporation as of the 31st day of the previous December, whichever amount is less. Failure of the Mayor to act within 60 days after such a filing shall constitute approval of the transaction. The Mayor shall not disapprove a transaction ongoing as of April 9, 1997 if the transaction was lawful when begun. Extension or renewal of a

transaction ongoing as of April 9, 1997, shall be subject to the notice and other requirements of the Holding Company Systems Act of 1993, and shall not be renewed or extended except upon terms approved by the Mayor. (Apr. 9, 1997, D.C. Law 11-245, § 24, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See D.C. Law 10-44, which is codified primarily as note to § 35-4701. § 35-3701 et seq.

**References in text.** — The “Holding Company Systems Act of 1993”, referred to in (b), is

## § 35-4724. Rules and regulations.

The Mayor, in accordance with Subchapter I of Chapter 15 of Title 1, may issue rules to implement the provisions of this chapter. (Apr. 9, 1997, D.C. Law 11-245, § 25, 44 DCR 1158.)

**Legislative history of Law 11-245.** — See note to § 35-4701.





# TITLE 36. LABOR.

## Chapter

1. Payment and Collection of Wages..... §§ 36-101 to 36-110.
2. Minimum Wages and Industrial Safety..... §§ 36-201 to 36-232.
3. Workers' Compensation..... §§ 36-301 to 36-345.
4. Voluntary Apprentices..... §§ 36-401 to 36-415.
5. Employment of Minors..... §§ 36-501 to 36-524.
6. Employment Opportunities..... §§ 36-601 to 36-605.
7. Public Employment Service..... §§ 36-701 to 36-702.
8. Lie Detectors..... §§ 36-801 to 36-803.
9. Miscellaneous Provisions..... §§ 36-901 to 36-902.
10. Employment Services Licensing and Regulation. . §§ 36-1001 to 36-1016.
11. Government Pay Equity and Training..... §§ 36-1101 to 36-1109.
12. Occupational Safety and Health..... §§ 36-1201 to 36-1224.
13. Family and Medical Leave..... §§ 36-1301 to 36-1317.
14. Health Care Benefits Expansion..... §§ 36-1401 to 36-1408.
15. Displaced Workers Protection..... §§ 36-1501 to 36-1503.
16. Parental Leave..... §§ 36-1601 to 36-1606.

## CHAPTER 1. PAYMENT AND COLLECTION OF WAGES.

Sec.

- 36-101. Definitions.
- 36-102. When wages must be paid; exceptions.
- 36-103. Payment of wages upon discharge or resignation of employee and upon suspension of work; employer's liability for failure to make such payment.
- 36-104. Unconditional payment of wages conceded to be due.

Sec.

- 36-105. Provisions of law may not be waived.
- 36-106. Enforcement, records and subpoenas.
- 36-107. Penalties.
- 36-108. Employees' remedies.
- 36-109. Mayor may delegate functions.
- 36-110. Severability.

### § 36-101. Definitions.

Whenever used in this chapter:

(1) "Employer" includes every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, association, or corporation, employing any person in the District of Columbia: Provided, that the word "employer" shall not include the government of the United States, the government of the District of Columbia, or any agency of either of said governments, or any employer subject to the Railway Labor Act (45 U.S.C. § 151 et seq.).

(2) "Employee" shall include any person suffered or permitted to work by an employer except any person employed in a bona fide executive, administrative, or professional capacity (as such terms are defined and delimited by regulations promulgated by the Council of the District of Columbia).

(3) "Wages" mean monetary compensation after lawful deductions, owed by an employer for labor or services rendered, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

(4) "Mayor" means the Mayor of the District of Columbia or his designated agent or agents.

(5) "Working day" means any day exclusive of Saturdays, Sundays, or legal holidays. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 1; 1973 Ed., § 36-601.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(285) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Cited in** *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

## § 36-102. When wages must be paid; exceptions.

Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer: Provided, however, that an interval of not more than 10 working days may elapse between the end of the pay period covered and the regular payday designated by the employer, except where a different period is specified in a collective agreement between an employer and a bona fide labor organization: Provided further, that where, by contract or custom, an employer has paid wages at least once each calendar month, he may lawfully continue to do so. Wages shall be paid on designated paydays in lawful money of the United States, or checks on banks payable upon demand by the bank upon which drawn. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 2; 1973 Ed., § 36-602.)

**Section references.** — This section is referred to in §§ 36-103, 36-104, and 36-107.

## § 36-103. Payment of wages upon discharge or resignation of employee and upon suspension of work; employer's liability for failure to make such payment.

Unless otherwise specified in a collective agreement between an employer and a bona fide union representing his employees:

(1) Whenever an employer discharges an employee, the employer shall pay the employee's wages earned not later than the working day following such discharge; provided, however, that in the instance of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of 4 days from the date of discharge or resignation for the



determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid.

(2) Whenever an employee (not having a written contract of employment for a period in excess of 30 days) quits or resigns, the employer shall pay the employee's wages due upon the next regular payday or within 7 days from the date of quitting or resigning, whichever is earlier.

(3) When work of an employee is suspended as a result of a labor dispute, the employer shall pay to such employee not later than the next regular payday, designated under § 36-102, wages earned at the time of suspension.

(4) If an employer fails to pay an employee wages earned as required under paragraphs (1), (2), and (3) of this section, such employer shall pay, or be additionally liable to, the employee, as liquidated damages, 10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required, or an amount equal to the unpaid wages, whichever is smaller: Provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition. (Aug. 3, 1956, 70 Stat. 976, ch. 924, § 3; 1973 Ed., § 36-603.)

**Section references.** — This section is referred to in § 36-104.

**Chapter applies to claims for unpaid wages.** — This chapter was applicable to a former employee's claims against a former employer for allegedly unpaid wages and, therefore, the denial of the former employee's claim for liquidated damages, attorneys' fees, and costs in reliance on the minimum wage law was

improper where the former employee did not quarrel with the hourly rate, but sued on the basis of wages allegedly due for certain hours of work. *Klingaman v. Holiday Tours, Inc.*, App. D.C., 309 A.2d 54 (1973).

**Cited in** *National Rifle Ass'n v. Ailes*, App. D.C., 428 A.2d 816 (1981); *Olevsky v. District of Columbia*, App. D.C., 548 A.2d 78 (1988).

## § 36-104. Unconditional payment of wages conceded to be due.

In case of a bona fide dispute concerning the amount of wages due, the employer shall give written notice to the employee of the amount of wages which he concedes to be due, and shall pay such amount, without condition, within the time required by §§ 36-102 and 36-103; provided, however, that acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim. Payment in accordance with this section shall constitute payment for the purposes of complying with §§ 36-102 and 36-103, only if there exists a bona fide dispute concerning the amount of wages due. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 4; 1973 Ed., § 36-604.)

**Section references.** — This section is referred to in § 36-107.

**§ 36-105. Provisions of law may not be waived.**

Except as herein provided, no provision of this chapter shall in any way be contravened or set aside by private agreement. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 5; 1973 Ed., § 36-605.)

**§ 36-106. Enforcement, records and subpoenas.**

(a) The Mayor shall enforce and administer the provisions of this chapter and may hold hearings and otherwise investigate any violations of this chapter and institute actions for penalties provided hereunder. Any and all prosecutions of violations of this chapter shall be conducted in the name of the District of Columbia and by the Corporation Counsel or his assistants.

(b) The Mayor shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in any proceedings before him.

(c) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia or any judge thereof, on application by the Mayor, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein. (Aug. 3, 1956, 70 Stat. 977, ch. 924, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 36-606.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**§ 36-107. Penalties.**

Any employer who, having the ability to pay, willfully violates any provisions of § 36-102 or § 36-104 or who fails to comply with any other provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for the 1st offense be punished by a fine of not more than \$300, or by imprisonment of not more than 30 days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than \$1,000 or by imprisonment of not more than 90 days, or in the discretion of the court, by both such fine and imprisonment. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 7; 1973 Ed., § 36-607.)

**Cited** in *Olevsky v. District of Columbia*, App. D.C., 548 A.2d 78 (1988).

## § 36-108. Employees' remedies.

(a) Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any 1 or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages. Whenever the Mayor determines that wages have not been paid, as herein provided, and that such unpaid wages constitute an enforceable claim, the Mayor may, upon the request of the employee, take an assignment in trust for the assigning employee of such wages, and of any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments, may bring any appropriate legal action necessary to collect such claim and may join in one proceeding or action such claims against the same employer as the Mayor deems appropriate. Upon any such assignment the Mayor shall have power to settle and adjust any such claim or claims on such terms as he may deem just.

(b) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. Such attorney's fees, in the case of actions brought under this subsection by the Mayor, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. The Mayor shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this chapter. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 8; 1973 Ed., § 36-608.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Chapter applies to claims for unpaid wages.** — This chapter was applicable to a former employee's claims against a former employer for allegedly unpaid wages and, therefore, denial of the former employee's claim for liquidated damages, attorneys' fees, and costs in reliance on the minimum wage law was improper, where the former employee did not quarrel with hourly rate, but sued on the basis of wages allegedly due for certain hours of work. *Klingaman v. Holiday Tours, Inc.*, App. D.C., 309 A.2d 54 (1973).

**Exhaustion of arbitration and grievance procedures required.** — Where the issues involved in an action brought alleging the breach of a collective bargaining agreement are covered in the agreement, and arise out of



statutes, which were enacted under Congress' plenary power to legislate for the District of Columbia and not under Congress' power to legislate for the entire nation, the employees are required to exhaust arbitration and grievance procedures under the agreement before bringing action. *Papadopoulos v. Sheraton Park Hotel*, 410 F. Supp. 217 (D.D.C. 1976).

**Effect of Superior Court Rule 19.** — Rule 19 of the Superior Court Rules of Procedure for

Small Claims and Conciliation Branch does not nullify statutory right of litigants to attorney's fees, under subsection (b) of this section, which was clearly remedial legislation designed to remove the cost of legal representation as a barrier to relief for unpaid workers. *Curry v. Sutherland*, 111 WLR 1613 (Super. Ct. 1983).

**Cited in** *Caryk v. Coupe*, 663 F. Supp. 1243 (D.D.C. 1987); *Gill v. Tolbert Constr., Inc.*, App. D.C., 676 A.2d 469 (1996).

## § 36-109. Mayor may delegate functions.

The Mayor is authorized to delegate to any agency of the government of the District of Columbia any function, power, or duty vested in or imposed upon him by this chapter. (Aug. 3, 1956, 70 Stat. 978, ch. 924, § 9; 1973 Ed., § 36-609.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 36-110. Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. (Aug. 3, 1956, 70 Stat. 979, ch. 924, § 10; 1973 Ed., § 36-110.)

CHAPTER 2. MINIMUM WAGES AND INDUSTRIAL SAFETY.

*Subchapter I. Minimum Wages.*

Sec.

- 36-201 to 36-219. [Repealed].
- 36-220. Findings and declaration of policy.
- 36-220.1. Definitions.
- 36-220.2. Requirements.
- 36-220.3. Exceptions.
- 36-220.4. Authority of Mayor.
- 36-220.5. Regulatory powers of Mayor.
- 36-220.6. Investigatory powers of Mayor.
- 36-220.7. Duties of employers; open records.
- 36-220.8. Posting of act and regulations on premises; distribution of copies to employers.
- 36-220.9. Violations.
- 36-220.10. Penalties; prosecution.
- 36-220.11. Civil liability.
- 36-220.12. Limitations.
- 36-220.13. Collective bargaining.
- 36-220.14. Application to revised wage orders.

*Subchapter II. Industrial Safety.*

- 36-221. Purpose of subchapter.

Sec.

- 36-222. Definitions.
- 36-223. Additional duties of Board under this subchapter.
- 36-224. Council to make rules and regulations; public hearing.
- 36-225. Board authorized to take testimony and issue subpoenas.
- 36-226. Variations from rules or regulations; public hearing.
- 36-227. Director of Industrial Safety.
- 36-228. Employer to furnish safe place of employment, information required by Board, report of employees' injury or death, and record of employees.
- 36-229. Authority to examine place of employment.
- 36-230. Mayor to furnish office space and supplies.
- 36-231. Annual report to Mayor.
- 36-232. Penalties for violation of subchapter; jurisdiction; prosecution.

*Subchapter I. Minimum Wages.*

**§§ 36-201 to 36-219. Findings and declaration of policy; definitions; minimum wage and overtime compensation; workweek; wage orders; exemptions of certain employees from minimum wage and overtime provisions; powers and duties of Mayor; investigations; statements from employers; reconsideration and revision of wage orders; ad hoc committees; committee reports of findings and recommendations; failure to report; issuance of revised wage orders; notice and hearing; notice and effective date of orders; contents of orders; restrictions; council to make regulations; judicial review of orders; stay pending determination of proceedings; Mayor authorized to take testimony and issue subpoenas; records of employers; availability for inspection; statements to employees; posting of law and wage orders; Mayor to furnish copies; unlawful acts; penalties for violation of § 36-213; jurisdiction; prosecu-**

**tions; liability of employer; liquidated damages; attorney fees and costs; assignment of claim; supervision of payment; statute of limitations; right of collective bargaining; severability; short title.**

Repealed. Mar. 25, 1993, D.C. Law 9-248, § 18, 40 DCR 761.

**Legislative history of Law 9-248.** — See note to § 36-220.

## § 36-220. Findings and declaration of policy.

(a) The Council of the District of Columbia finds that persons employed in the District of Columbia should be paid at wages sufficient to provide adequate maintenance and to protect health. Any wage that is not sufficient to provide adequate maintenance and to protect health impairs the health, efficiency, and well-being of persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that their wages be supplemented by the payment of public moneys for relief or other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of the District of Columbia and injures the overall economy.

(b) It is declared the policy of this subchapter to ensure the elimination of the conditions referred to above. (Mar. 25, 1993, D.C. Law 9-248, § 2, 40 DCR 761.)

**Legislative history of Law 9-248.** — Law 9-248, the “Minimum Wage Act Revision Act of 1992,” was introduced in Council and assigned Bill No. 9-343, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-394 and transmitted to both Houses of Congress for its review. D.C. Law 9-248 became effective on March 25, 1993.

**Mayor authorized to issue rules.** — Section 17 of D.C. Law 9-248 provided that the Mayor shall issue rules necessary to carry out the provisions of the act pursuant to subchapter I of Chapter 15 of Title I.

**Delegation of Authority Pursuant to**

**D.C. Law 9-248, the “District of Columbia Minimum Wage Act Revision Act of 1992.”**

— See Mayor’s Order 93-114, July 27, 1993.

**Constructive refusal to violate law.** — Complaints to employer and to the District authorities did not constitute employee’s constructive refusal to violate the law, sufficient to bring him within the narrow exception to the at-will doctrine, under which a discharged at-will employee may sue his or her former employer for wrongful discharge when the sole reason for the discharge is the employee’s refusal to violate the law, as expressed in a statute or municipal regulation. *Thigpen v. Greenpeace, Inc.*, App. D.C., 657 A.2d 770 (1995).

### § 36-220.1. Definitions.

For the purposes of this subchapter:

(1) The term “employ” includes to suffer or permit to work.



(2) The term “employee” includes any individual employed by an employer, except that this term shall not include:

(A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) Any individual employed as a casual babysitter, in or about the residence of the employer.

(3) The term “employer” includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States or the District of Columbia.

(4) The term “gratuities” means voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.

(5) The term “Mayor” means the Mayor of the District of Columbia or the Mayor’s designated agent or representative, including the Department of Employment Services.

(6) The term “occupation” means any occupation, service, trade, business, industry, or branch or group of occupations or industries, or employment or class of employment, in which employees are gainfully employed.

(7) The term “regular rate” means all remuneration for employment paid to, or on behalf of, the employee, but shall not be considered to include the items set forth in the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 207(e)(1), (2), (3), (4), (5), (6), and (7). Extra compensation paid as described in § 207(e)(5), (6), and (7) shall be creditable toward overtime compensation.

(8) The term “wage” means compensation due to an employee by reason of the employee’s employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, including allowances as may be permitted by any regulation issued under §§ 36-220.2 and 36-220.5.

(9) The term “Washington metropolitan region” means the area consisting of the District of Columbia, Montgomery, and Prince George’s Counties in Maryland, Arlington and Fairfax Counties and the Cities of Alexandria, Fairfax and Falls Church in Virginia.

(10) The term “working time” means all the time the employee:

(A) Is required to be on the employer’s premises, on duty, or at a prescribed place;

(B) Is permitted to work;

(C) Is required to travel in connection with the business of the employer; or

(D) Waits on the employer’s premises for work.

Interpretations of what constitutes working time shall be made in accordance with Title 29 of the Code of Federal Regulations, Part 785, Hours Worked Under the Fair Labor Standards Act of 1938, as amended, except that references to interpretations of the Portal-to-Portal Act shall have no force and effect. (Mar. 25, 1993, D.C. Law 9-248, § 3, 40 DCR 761.)

**Legislative history of Law 9-248.** — See Act”, referred to in (10), is 29 U.S.C. § 251 et seq.

**References in text.** — The “Portal-to-Portal

## § 36-220.2. Requirements.

(a) On October 1, 1993, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be the minimum wage set by the United States government from time to time pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 et seq.) (“Fair Labor Standards Act”), plus \$1.

(b) A person shall be employed in the District of Columbia when:

(1) The person regularly spends more than 50% of their working time in the District of Columbia; or

(2) The person’s employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state.

(c) No employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1½ times the regular rate at which the employee is employed.

(d) All handicapped workers shall be paid at a rate not less than the minimum wage, except in those instances where a certificate has been issued by the United States Department of Labor that authorizes the payment of less to handicapped workers under § 214(c) of the Fair Labor Standards Act.

(e) No employer shall be deemed to have violated subsection (c) of this section if the employee works for a retail or service establishment and:

(1) The regular rate of pay of the employee is in excess of 1½ times the minimum hourly rate applicable to the employee under this subchapter; and

(2) More than ½ of the employee’s compensation for a representative period (not less than 1 month) represents commissions on goods or services.

(f) In determining the wage of an employee who receives gratuities, the amount paid to the employee by the employer shall be deemed to be increased on account of gratuities by an amount determined by the employer, but not by an amount in excess of 55% of the minimum wage as set by subsection (a) of this section, except that the amount of the increase on account of gratuities determined by the employer shall not exceed the value of gratuities received by the employee.

(g) Subsection (f) of this section shall not apply to an employee who receives gratuities unless:

(1) The employee has been informed by the employer of the provisions of subsection (f) of this section; and

(2) All gratuities received by the employee have been retained by the employee, except that this provision shall not be construed to prohibit the pooling of gratuities among employees who customarily receive gratuities. (Mar. 25, 1993, D.C. Law 9-248, § 4, 40 DCR 761.)

**Section references.** — This section is referred to in §§ 36-220.1, 36-220.3, and 36-220.5.

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.3. Exceptions.

(a) The minimum wage and overtime provisions of § 36-220.2 shall not apply with respect to:

(1) Any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as these terms are defined by the Secretary of Labor under 201 et seq. of the Fair Labor Standards Act; or

(2) Any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of § 36-220.2(c) shall not apply with respect to:

(1) Any employee employed as a seaman;

(2) Any employee employed by a railroad;

(3) Any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a nonmanufacturing establishment primarily engaged in the business of selling these vehicles to ultimate purchasers;

(4) Any employee employed primarily to wash automobiles by an employer whose annual dollar volume of sales is derived by more than 50% from washing automobiles, and for the employee's employment in excess of 160 hours over a period of 4 consecutive workweeks, the employee receives compensation at a rate of 1½ times or more the regular rate at which he is employed;

(5) Any employee employed as an attendant at a parking lot or parking garage; or

(6) Any employee employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to these employees. (Mar. 25, 1993, D.C. Law 9-248, § 5, 40 DCR 761.)

**Section references.** — This section is referred to in § 36-220.14.

**Legislative history of Law 9-248.** — See note to § 36-220.

**Not employed in bona fide executive or administrative capacity.** — Where employees had no authority to hire, fire, or discipline employees, and did not have as their primary

duty management of the company and at trial established that they were line employees whose primary duty was counselling, they were not employed in a "bona fide executive or administrative capacity." *Jones and Assocs. v. District of Columbia*, App. D.C., 642 A.2d 130 (1994).

### § 36-220.4. Authority of Mayor.

The Mayor or his authorized representative shall have the authority to:

(1) Investigate and ascertain the wages of persons employed in any occupation in the District of Columbia;



(2) Enter and inspect the place of business or employment of any employer in the District of Columbia in order to:

(A) Examine and inspect any books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate;

(B) Copy books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate; and

(C) Question an employee for the purpose of ascertaining whether the provisions of this subchapter and the orders and regulations issued thereunder have been and are being complied with; and

(3) Require from any employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and any other information that pertains to the employment of the employees as the Mayor or the Mayor's authorized representative may deem necessary or appropriate to carry out the purposes of this subchapter. (Mar. 25, 1993, D.C. Law 9-248, § 6, 40 DCR 761.)

**Legislative history of Law 9-248.** — See note to § 36-220.

## § 36-220.5. Regulatory powers of Mayor.

(a) The Mayor shall make and revise regulations, including definitions of terms, as deemed appropriate to carry out the purposes of this subchapter or necessary to prevent its circumvention or evasion and to safeguard the minimum wage rates and the overtime provisions established by this subchapter.

(b) The Mayor shall make regulations in order to:

(1) Provide reasonable allowances for board, lodging, or services customarily furnished by employers to employees; and

(2) Provide allowances for other special conditions or circumstance that may be usual in a particular employer-employee relationship.

(c) The Mayor may make regulations in order to:

(1) Define and govern the employment of workers under 18 years of age and provide minimum wages for these workers at a rate lower than that specified in § 36-220.2;

(2) Govern piece rates, bonuses, and commissions in relation to time rates;

(3) Govern part-time rates;

(4) Govern minimum daily wages;

(5) Relate to wage provisions governing split shifts and excessive spread of hours; and

(6) Govern uniforms, tools, travel, and other items of expense incurred by employees as a condition of employment.

(d) The Council of the District of Columbia shall review and make recommendations, as needed, to the Mayor or the Mayor's authorized representative, to ensure that the minimum wage set by the federal government, plus \$1, is

fair and adequate for employees in the District of Columbia. (Mar. 25, 1993, D.C. Law 9-248, § 7, 40 DCR 761.)

**Section references.** — This section is referred to in §§ 36-220.1, and 36-220.9.

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.6. Investigatory powers of Mayor.

The Mayor shall have the power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any meeting of any committee or for the use of the Mayor in securing compliance with this subchapter. In case of disobedience to a subpoena, the Mayor may invoke the aid of the Superior Court of the District of Columbia to require the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena, the Court may issue an order to require an appearance before the Mayor, the production of documentary evidence, and the giving of evidence, and any failure to obey the order of the Court may be punished by the Court as contempt. (Mar. 25, 1993, D.C. Law 9-248, § 8, 40 DCR 761.)

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.7. Duties of employers; open records.

(a)(1) Every employer subject to any provision of this subchapter or of any regulation or order issued under this subchapter shall make, keep, and preserve for a period of not less than 3 years a record of:

- (A) The name, address, and occupation of each employee;
  - (B) A record of the date of birth of any employee under 19 years of age;
  - (C) The rate of pay and the amount paid each pay period to each employee;
  - (D) The hours worked each day and each workweek by each employee;
- and

(E) Any other records or information as the Mayor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subchapter or of the regulations issued under this subchapter.

(2) Any records shall be open and made available for inspection or transcription by the Mayor or the Mayor's authorized representative at any reasonable time. Every employer shall furnish the Mayor or to the Mayor's authorized representative on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor.

(b) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid, deductions from and additions to wages, net wages paid, hours worked during the pay period, and any other information as the Mayor may prescribe by regulation. (Mar. 25, 1993, D.C. Law 9-248, § 9, 40 DCR 761.)

**Section references.** — This section is referred to in § 36-220.9.

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.8. Posting of act and regulations on premises; distribution of copies to employers.

(a) Every employer who is subject to any provision of this subchapter or any regulation issued under this subchapter shall keep a copy or summary of this subchapter and any applicable regulation issued under this subchapter, in a form prescribed or approved by the Mayor, posted in a conspicuous and accessible place in or about the premises at which any employee covered by the regulation is employed.

(b) Employers shall be furnished copies or summaries of this subchapter by the Mayor on request without charge. (Mar. 25, 1993, D.C. Law 9-248, § 10, 40 DCR 761.)

**Section references.** — This section is referred to in § 36-220.9.

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.9. Violations.

It shall be unlawful for any employer to:

(1) Violate any of the provisions of this subchapter or any of the provisions of any regulation issued under this subchapter;

(2) Violate any of the provisions of §§ 36-220.7 and 36-220.8 or any regulation made under the provisions of § 36-220.5, or to make any statement, report, or record filed or kept pursuant to the provisions of § 36-220.7 or any regulation or order issued under § 36-220.5 knowing the statement, report, or record to be false in a material respect;

(3) Discharge or in any other manner discriminate against any employee because that employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this subchapter or has testified or is about to testify in any proceeding; or

(4) Hinder or delay the Mayor or the Mayor's authorized representative in the enforcement of this subchapter, to refuse to admit the Mayor or the Mayor's authorized representative to any place of employment upon demand, to refuse to make available any record to the Mayor or Mayor's authorized agent required to be made, kept, or preserved under this subchapter, or to fail to post a summary or copy of this subchapter or of any applicable regulation or order, as required under § 36-220.8. (Mar. 25, 1993, D.C. Law 9-248, § 11, 40 DCR 761.)

**Section references.** — This section is referred to in § 36-220.10.

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.10. Penalties; prosecution.

(a) Any person who willfully violates any of the provisions of § 36-220.9 shall, upon conviction, be subject to a fine of not more than \$10,000, or to imprisonment of not more than 6 months, or both.



(b) No person shall be imprisoned under this section except for an offense committed after the conviction of that person for a prior offense under this section.

(c) Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia. (Mar. 25, 1993, D.C. Law 9-248, § 12, 40 DCR 761.)

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.11. Civil liability.

(a) Any employer who pays any employee less than the wage to which that employee is entitled under this subchapter shall be liable to that employee in the amount of the unpaid wages, and an additional amount as liquidated damages, except that if, in any action commenced to recover unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission that gave rise to the action was in good faith and that the employer had reasonable grounds for the belief that the act or omission was not a violation of this subchapter, the court may award no liquidated damages, or award any amount not to exceed the amount specified in this section.

(b) Action to recover damages sued for under this subchapter may be maintained in any court of competent jurisdiction in the District of Columbia by any 1 or more employees for and on behalf of the employee and other employees who are similarly situated. No employee shall be a party plaintiff to any action brought under this subchapter unless the employee gives written consent to become a party and the written consent is filed in the court in which the action is brought.

(c) The court in which the action is brought shall allow for reasonable attorney's fees and costs of the action to be paid by the defendant to the prevailing party.

(d) Any agreement between an employer and employee in which the employee agrees to work for less than the wages to which the employee is entitled under this subchapter or any regulation issued under this subchapter shall be no defense to any action to recover unpaid wages or liquidated damages.

(e) At the written request of any employee who is paid less than the employee is entitled under this subchapter or any regulation issued under this subchapter, the Mayor may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim. In an action of this type, the defendant shall be required to pay the costs and reasonable attorney's fees as may be allowed by the court.

(f) The Mayor is authorized to supervise the payment of unpaid wages owed to any employee under this subchapter or any regulation issued under this subchapter, and the agreement of any employee to accept this payment, shall upon full payment, constitute a waiver by the employee of any right the employee may have under subsection (a) of this section to any unpaid wages,

and an additional equal amount as liquidated damages. (Mar. 25, 1993, D.C. Law 9-248, § 13, 40 DCR 761.)

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.12. Limitations.

Any action commenced on or after March 25, 1993, to enforce any cause of action for unpaid wages or liquidated damages under this subchapter or any regulation issued under this subchapter must be commenced within 3 years after the cause of action accrued or the cause of action shall be forever barred. (Mar. 25, 1993, D.C. Law 9-248, § 14, 40 DCR 761.)

**Legislative history of Law 9-248.** — See note to § 36-220.

Cited in *Arias v. United States Serv. Indus., Inc.*, 80 F.3d 509 (D.C. Cir. 1996).

### § 36-220.13. Collective bargaining.

Nothing in this subchapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the standards applicable under the provisions of this subchapter. (Mar. 25, 1993, D.C. Law 9-248, § 15, 40 DCR 761.)

**Legislative history of Law 9-248.** — See note to § 36-220.

### § 36-220.14. Application to revised wage orders.

Section 36-220.3(a) shall not apply to any revised wage order issued by the Wage-Hour Board that sets a minimum wage that is higher than the minimum wage set by this subchapter. (Mar. 25, 1993, D.C. Law 9-248, § 16, 40 DCR 761.)

**Legislative history of Law 9-248.** — See note to § 36-220.

## *Subchapter II. Industrial Safety.*

### § 36-221. Purpose of subchapter.

The purpose of this subchapter is to foster, promote, and develop the safety of wage earners of the District of Columbia in relation to their working conditions. (Sept. 19, 1918, ch. 174, title II, § 1; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; 1973 Ed., § 36-431.)

**Legislative history of Law 7-186.** — Law 7-186, the “D.C. Occupational Safety and Health Act of 1988,” was introduced in Council and assigned Bill No. 7-28, which was referred

to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 27, 1988, and October 11, 1988, respectively. Approved with-

out the signature of the Mayor on November 2, 1988, it was assigned Act No. 7-245 and transmitted to both Houses of Congress for its review.

**Repeal of subchapter.** — Section 25 of D.C. Law 7-186 repeals this subchapter. Section 26(a) provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Congressional intent.** — Congress intended that the Occupational Safety and Health Act of 1970 and this subchapter coexist. *P & Z Co. v. District of Columbia*, App. D.C., 408 A.2d 1249 (1979).

**Scope of subchapter.** — Subchapter affects relationship between employer and employee

only. *Kurtz v. Capital Wall Paper Co.*, App. D.C., 61 A.2d 470 (1948).

**Basis for burden on employers.** — The congressionally-established standard requiring employers to exercise due care for the prevention of all accidents which might thereby be avoided implicitly recognizes that wage earners will not always exercise due care for their own safety. *Martin v. George Hyman Constr. Co.*, App. D.C., 395 A.2d 63 (1978).

**Inspection and supervision.** — The purpose of the requirement of inspection and supervision is to prevent unsafe practices, not to authorize or even direct a subcontractor to engage in them. *Fry v. Diamond Constr. Inc.*, App. D.C., 659 A.2d 241 (1995).

## § 36-222. Definitions.

When used in this subchapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

(1) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or other persons having control or custody of any place of employment or of any employee. It shall not include the District of Columbia or any instrumentality thereof, or the United States or any instrumentality thereof.

(2) "Board" means the Minimum Wage and Industrial Safety Board.

(3) "Safe" and "safety" as applied to an employment, a device, or a place of employment, including facilities of sanitation and hygiene, mean such freedom from danger to life or health of employees as circumstances reasonably permit, and shall not be given restrictive interpretation so as to exclude any mitigation or prevention of a specific danger.

(4) "Place of employment" means any place where employment is carried on; provided, however, that such term shall not include the premises of any federal or District of Columbia establishment, except to include any and all work of whatever nature being performed by an independent contractor for the United States government or any instrumentality thereof, or the District of Columbia or any instrumentality thereof. (Sept. 19, 1918, ch. 174, title II, § 2; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(1); 1973 Ed., § 36-432.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

**References in text.** — The Minimum Wage and Industrial Safety Board, referred to in paragraph (2) of this section, was replaced by the District of Columbia Occupational Safety

and Health Board, pursuant to D.C. Law 7-186, §§ 6 and 25, codified at § 36-1205 and providing for the repeal of §§ 36-221 to 36-232.

**"Safe" broadly defined.** — The term "safe" as used in this subchapter has been defined broadly. *Martin v. George Hyman Constr. Co.*, App. D.C., 395 A.2d 63 (1978).



## § 36-223. Additional duties of Board under this subchapter.

The Board, in addition to its duties defined in subchapter I of this chapter shall administer the provisions of this subchapter and shall have power to make such inspections and investigations as it may deem necessary; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records as it may deem advisable and to furnish the Board with complete, detailed reports relative to all accidents. The Council of the District of Columbia shall have power to determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this subchapter. To promote the safety of persons employed in existing buildings or other existing structures, such rules, regulations, and standards may require, without limitation, changes in the permanent or temporary features of such buildings or other structures. (Sept. 19, 1918, ch. 174, title II, § 3; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(2); 1973 Ed., § 36-433.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (283) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Employer's duty to comply with safety standards.** — Congress has power to impose on the employer in the District of Columbia a duty to ascertain at his peril whether his equipment, used by employees, complies with the set

minimum safety standards. *Davis v. District of Columbia*, App. D.C., 59 A.2d 208 (1948).

**Safety regulations not limited by common-law reasonableness standard.** — Administratively imposed safety regulations which more specifically define the general duty to provide reasonably safe conditions of employment are not limited by the common-law standard of "reasonableness" but rather are valid unless so unreasonable as to be void. *Martin v. George Hyman Constr. Co.*, App. D.C., 395 A.2d 63 (1978).

Unreasonableness of a requirement in a regulation of the Board as to ladders, that wood used in the side rails thereof be dried to not more than the specified moisture content, did not render the entire regulation unreasonable. *Davis v. District of Columbia*, App. D.C., 59 A.2d 208 (1948).

**Assumption of risk.** — Defense of assumption of risk bars a claim based upon breach of a duty imposed by the statutory safety scheme only where the defendant proves (1) that there was available to the wage earner an alternative to encountering the risk, (2) that the wage earner's choice was fully voluntary, (3) that the alternative afforded the safety mandated by statute, rule, or regulation, and (4) that the wage earner's determination to encounter the risk was, under the circumstances, made with willful, wanton, or reckless disregard for his own safety. *Martin v. George Hyman Constr. Co.*, App. D.C., 395 A.2d 63 (1978).

**Cited in** *P & Z Co. v. District of Columbia*, App. D.C., 408 A.2d 1249 (1979).

### § 36-224. Council to make rules and regulations; public hearing.

Before any rules or regulations of the Council of the District of Columbia shall become effective a public hearing shall be held by the Council for the purpose of investigating reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment, and any person interested in the matter being investigated may appear and testify. If, after investigation, the Council is of the opinion that minimum standards of safety requirements are necessary to protect or safeguard the lives or health of employees covered by this subchapter, it may adopt and promulgate such rules and regulations as it may deem advisable, which shall become effective 30 days after publication of notice at least once in a newspaper of general circulation in the District of Columbia that they have been adopted and copies are available to the public at the Office of the Mayor of the District of Columbia. (Sept. 19, 1918, ch. 174, title II, § 4; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 4; June 14, 1944, 58 Stat. 279, ch. 258; 1973 Ed., § 36-434.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (284) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Cited in** *East River Constr. Corp. v. District of Columbia*, App. D.C., 160 A.2d 389 (1960).

### § 36-225. Board authorized to take testimony and issue subpoenas.

Any member of the Board shall have power to administer oaths and the Board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any session or any conference held by the Board. In case of disobedience to a subpoena the Board may invoke the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In the case of contumacy or refusal to obey a subpoena, the Court may issue an order requiring appearance before the Board, the production of documentary evidence and the giving of evidence touching the matter in question, and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. (Sept. 19, 1918, ch. 174, title II, § 5; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b);

May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(38); 1973 Ed., § 36-435.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

## § 36-226. Variations from rules or regulations; public hearing.

The Board may, upon written application of any employer affected by such rule or regulation, permit variations from any provisions thereof if it shall find that the application of such provision would result in unnecessary hardship or practical difficulty, and notwithstanding such variance, that the protection afforded by such rule or regulation will be provided. The Board may grant a hearing open to the public on such application upon request of the applicant or other interested party or parties, or on its own initiative. The Board's decision thereon shall be subject to review by the District of Columbia Court of Appeals upon petition of the applicant or other affected party or parties. The Board shall keep a properly indexed record of all variations permitted from any rule or regulation, which shall be open to public inspection. (Sept. 19, 1918, ch. 174, title II, § 6; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(3); 1973 Ed., § 36-436.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

## § 36-227. Director of Industrial Safety.

The Board is hereby authorized to employ a Director of Industrial Safety, who shall not be a member of the Board. The Director shall perform such duties as may be prescribed by the Board in administering the provisions of this subchapter. (Sept. 19, 1918, ch. 174, title II, § 7; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); 1973 Ed., § 36-437; Mar. 3, 1979, D.C. Law 2-139, § 3205(k), 25 DCR 5740.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 2-139.** — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was

adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.



## § 36-228. Employer to furnish safe place of employment, information required by Board, report of employees' injury or death, and record of employees.

(a) Every employer shall furnish a place of employment which shall be reasonably safe for employees, shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably safe and adequate to render such employment and place of employment reasonably safe.

(b) Every employer shall furnish to the Board any information which the Board is authorized to require and shall make true and specific answers to all questions.

(c) Every employer shall submit to the Board within 10 days from the date of any injury or death, or from the date that the employer has knowledge of any disease or infection resulting from any injury, a duplicate copy of the report provided for in § 930 of Title 33, United States Code, as made applicable to the District of Columbia by §§ 36-501 and 36-502.

(d) Every employer shall keep an accurate record of every person employed by him so as to be able in case of accident immediately to give an accurate record relative to same. (Sept. 19, 1918, ch. 174, title II, § 8; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; 1973 Ed., § 36-438.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

**References in text.** — The references to §§ 36-501 and 36-502, referred to at the end of subsection (c) of this section, are references to those sections as they appeared in the 1973 Edition of the D.C. Code. Chapter 5 of Title 36 was revised by the Act of July 1, 1980, D.C. Law 3-77. D.C. Law 3-77 repealed §§ 36-501 and 36-502 as they appeared in the 1973 Edition of the D.C. Code. Therefore the reference to these sections is no longer relevant.

**Reporting requirement not preempted.** — The provision in the Occupational Safety and Health Act of 1970, which preempts state standards, does not operate to preempt the District of Columbia reporting requirement provided in this section. *P & Z Co. v. District of Columbia*, App. D.C., 408 A.2d 1249 (1979).

**Safety regulations not limited by common-law reasonableness standard.** — Administratively imposed safety regulations which more specifically define the general duty to provide reasonably safe conditions of employment are not limited by the common-law standard of "reasonableness" but rather are valid unless so unreasonable as to be void. *Martin v. George Hyman Constr. Co.*, App. D.C., 395 A.2d 63 (1978).

**Contributory negligence not bar to recovery.** — Contributory negligence of wage earner does not bar recovery based upon his employer's breach of the statutory duty to provide reasonably safe working conditions, and it is immaterial whether that duty derives from the general language of the statute or from the provisions of a rule or regulation adopted pursuant to § 36-433 (now § 36-223). *Martin v. George Hyman Constr. Co.*, App. D.C., 395 A.2d 63 (1978).

**Assumption of risk.** — Defense of assumption of risk bars a claim based upon breach of a duty imposed by the statutory safety scheme only where the defendant proves (1) that there was available to the wage earner an alternative to encountering the risk, (2) that the wage earner's choice was fully voluntary, (3) that the alternative afforded the safety mandated by statute, rule, or regulation, and (4) that the wage earner's determination to encounter the risk was, under the circumstances, made with willful, wanton, or reckless disregard for his own safety. *Martin v. George Hyman Constr. Co.*, App. D.C., 395 A.2d 63 (1978).

**Cited in** *Ceco Corp. v. Coleman*, App. D.C., 441 A.2d 940 (1982); *Jeffries v. Potomac Dev. Corp.*, 822 F.2d 87 (D.C. Cir. 1987); *Fry v. Diamond Constr. Inc.*, App. D.C., 659 A.2d 241 (1995).

## § 36-229. Authority to examine place of employment.

The Board, or any officer or employee acting under its authority, shall have the authority, at any reasonable time, to enter any place where an employment covered by this subchapter is being carried on, and to examine any structure, tool, appliance, machinery, or process used in or connected with such employment. No employer or other persons shall refuse to admit any member of the Board or its authorized representative to any such place or to permit any such examination. (Sept. 19, 1918, ch. 174, title II, § 9; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; 1973 Ed., § 36-439.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

## § 36-230. Mayor to furnish office space and supplies.

The Mayor of the District of Columbia shall furnish the Board with such office space, furniture and equipment, stationery, books, books of reference, and other supplies as are necessary for the discharge of its duties under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 10; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; 1973 Ed., § 36-440.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 36-231. Annual report to Mayor.

The Board shall annually, on or before the 1st day of July, file with the Mayor of the District of Columbia a report covering its activities under this subchapter. (Sept. 19, 1918, ch. 174, title II, § 11; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; 1973 Ed., § 36-441.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 36-232. Penalties for violation of subchapter; jurisdiction; prosecution.

Whoever violates any of the provisions of this subchapter, or any rules or regulations promulgated hereunder, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$100 or more than \$600, or by imprisonment of not exceeding 90 days. Prosecutions for violations of this subchapter shall be in the name of the District of Columbia on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or one of his assistants. (Sept. 19, 1918, ch. 174, title II, § 12; Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title V, § 501(4); 1973 Ed., § 36-442.)

**Legislative history of Law 7-186.** — See note to § 36-221.

**Repeal of subchapter.** — See note to § 36-221.

**Burden of proof.** — Burden is on employer, charged with a violation of the Board's regulation, to demonstrate clearly that the regulation is beyond the Board's delegated authority or so unreasonable as to be void. *Davis v. District of Columbia*, App. D.C., 59 A.2d 208 (1948).

**Government not required to prove violator's knowledge.** — Since Congress used no words bearing on specific intent in this section, the government was not required to prove that an excavation corporation, charged with violating a District of Columbia construction safety regulation, knew of such violations. *Hutchison Bros. Excavation Co. v. District of Columbia*, App. D.C., 278 A.2d 318 (1971).



CHAPTER 3. WORKERS' COMPENSATION.

Sec.	Sec.
36-301. Definitions.	36-324. Modification of awards.
36-302. Administration; annual report to Council.	36-325. Hearings before Mayor.
36-303. Coverage.	36-326. Attendance of witnesses.
36-304. Exclusiveness of liability and remedy.	36-327. Witness fees.
36-305. Commencement of compensation; maximum compensation.	36-328. Costs in proceedings brought without reasonable grounds; penalty for unreasonable delay in payment of compensation.
36-306. Supplemental allowance.	36-329. Powers of Mayor.
36-307. Medical services, supplies, and insurance.	36-330. Attorney fees.
36-308. Compensation for disability.	36-331. Employer record of injury or death.
36-309. Compensation for death.	36-332. Employer reports.
36-310. Occupational disease.	36-333. Penalty for misrepresentation.
36-311. Determination of average weekly wage.	36-334. Security for payment of compensation.
36-312. Guardian for minor or incompetent.	36-335. Compensation for injuries where third persons are liable.
36-313. Notice of injury or death.	36-336. Notice of compensation secured.
36-314. Time for filing claims.	36-337. Discharge of liability.
36-315. Payment of compensation.	36-338. Insurance policies.
36-316. Invalid agreements.	36-339. Failure to secure payment of compensation.
36-317. Assignment of compensation; exemption from claims of creditors.	36-340. Special fund.
36-318. Compensation as lien against assets.	36-341. Administration fund.
36-319. Collection of defaulted payments.	36-342. Retaliatory actions by employer prohibited.
36-320. Procedure in respect of claims.	36-342.1. Establishment of Commission.
36-321. Presumptions.	36-343. Appropriations.
36-322. Review of compensation orders.	36-344. Severability.
36-323. Appearance of Corporation Counsel for Mayor.	36-345. Effective date.

§ 36-301. Definitions.

When used in this chapter, the term:

(1) "Adoption" or "adopted" means legal adoption prior to the time of the injury.

(2) "Brother" or "sister" includes stepbrothers and stepsisters, half-brothers and half-sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee.

(3) "Carrier" means any person or fund authorized under § 36-334 to insure under this chapter and includes self-insurers.

(4) "Child" includes a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least 1 year prior to the time of injury, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on the employee.

(5) "Child," "grandchild," "brother," or "sister" includes only persons who are:

(A) Under 18 years of age, and also persons who, though 18 years of age or over, are substantially dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability; or

(B) Are students as defined herein.

(6) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided herein.

(7) "Death" as a basis for a right to compensation means only death resulting from an injury.

(8) "Disability" means physical or mental incapacity because of injury which results in the loss of wages.

(9) "Employee" includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, in the District of Columbia, except:

(A) An employee subject to the provisions of § 7902 and subchapter I of Chapter 81 of Title 5, United States Code;

(B) An employee subject to the provisions of subchapter XXIV of Chapter 6 of Title 1;

(C) Any secretary, stenographer, or other person performing any services in the office of any member of Congress, or under the direction, employment, or at the request of any member of Congress;

(D) An employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia;

(E) An employee engaged in employment that is casual and not in the usual course of trade, business, occupation, or profession of the employer unless the employee is employed in domestic service in and around a private home by any employer who, during any calendar quarter in the same or the previous year, employed 1 or more household domestic workers for 240 hours or more; or

(F) Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if:

(i) Substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions;

(ii) The services of the salesperson or associated broker are performed under a written contract specifying that the salesperson or associated broker is an independent contractor; and

(iii) Such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.

(10) "Employer" includes any individual, firm, association, or corporation, or receiver, or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay within the District of Columbia.

(11) "Grandchild" means a child as above defined of a child as above defined.

(12) "Injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of third persons directed against an employee because of his employment.

(13) "Insurance consultation services" means any survey, consultation, inspection, advisory or related services performed by a carrier, its agents, employees or service contractors incident to an applicable policy of insurance for the purpose of reducing the likelihood of injury, death or loss, or to collect or verify information for purpose of underwriting.

(14) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(15) "Parent" includes stepparents and parents by adoption, parents-in-law, and any person who for more than 3 years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) "Person" means an individual, partnership, corporation, association, firm, trust, or legal representative thereof.

(17) "Physical impairment" means any physical or mental condition which is or is likely to be a hindrance or obstacle to obtaining employment.

(17A) "Physician" means a physician, dentist, or chiropractor licensed in:

(A) Accordance with Chapter 33 of Title 2; or

(B) Any state or jurisdiction of the United States, in accordance with the laws of that state or jurisdiction.

(18) "Student" means a person regularly pursuing a full-time course of study or training at an institution which is:

(A) A school or college or university operated or directly supported by the United States, or by any state or local government or political subdivision thereof;

(B) A school or college or university which has been accredited by a state or the District of Columbia, or a state or District of Columbia recognized, or nationally recognized accrediting agency or body;

(C) A school or college or university not so accredited but whose credits are accepted, on transfer, by not less than 3 institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) An additional type of educational or training institution as defined by the Mayor, but not after he reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where his 23rd birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if he shows to the satisfaction of the Mayor that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during a period of reasonable duration during which, in the judgment of the Mayor, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed a student under this section during a period of service in the Armed Forces of the United States.

(18A) "Utilization review" means the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards.



(19) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from other than the employer.

(20) "Widow" or "widower" includes the decedent's wife or husband living with or dependent for support upon the decedent at the time of his death; or living apart for justifiable cause or by reason of his or her desertion at such time.

(21) When used in this chapter, the singular includes the plural. (July 1, 1980, D.C. Law 3-77, § 2, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(a), 37 DCR 6890; Sept. 22, 1994, D.C. Law 10-169, § 2, 41 DCR 5145.)

**Section references.** — This section is referred to in § 36-311.

**Legislative history of Law 3-77.** — Law 3-77, the "District of Columbia Workers' Compensation Act of 1979," was introduced in Council and assigned Bill No. 3-106, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on April 22, 1980, and May 6, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-188 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-198.** — See note to § 36-342.1.

**Legislative history of Law 10-169.** — Law 10-169, the "District of Columbia Workers' Compensation Act of 1979 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-143, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-289 and transmitted to both Houses of Congress for its review. D.C. Law 10-169 became effective on September 22, 1994.

**Mayor authorized to issue rules.** — Section 4 of D.C. Law 8-198 provided that (a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this act within 90 days from the date of enactment of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) The proposed rules shall include standards for:

(1) A coding system for medical reports and bills; and

(2) The implementation of utilization review.

**District of Columbia Workers' Compensation Equity Amendment Act of 1990 Rulemaking Disapproval Resolution of 1991.** — Pursuant to Resolution 9-145, effective November 22, 1991, the Council disapproved the proposed rules to implement the District of Columbia Workers' Compensation Equity Amendment Act of 1990.

**Applicability.** — The 1979 Workers' Compensation Act, rather than the repealed 1928 Act, covers a workers' injury or disease if the employment events that gave rise to the injury occurred before the 1979 Act took effect, but the worker did not become aware of the injury and its job-relatedness until after that time, unless there is no subject matter jurisdiction of a claim under that Act or any other state law, in which event, to avoid depriving an injured worker of any workers' compensation coverage, the Longshore and Harbor Workers' Compensation Act, as extended by Congress to District of Columbia private sector workers in the 1928 Act, will apply. *Railco Multi-Construction Co. v. Gardner*, 902 F.2d 71 (D.C. Cir. 1990).

Where employee was injured before July 26, 1982, his injury was covered by the D.C. Workers' Compensation Act of 1928, (former § 36-501 et seq.), and he had no rights under the 1979 Workers' Compensation Act, § 36-301 et seq. *Shea v. Director, Office of Workers' Comp. Programs*, 929 F.2d 736 (D.C. Cir. 1991).

Employee's employment injury established the basis for his spouse's death benefit claim, thus her claim for death benefits, like his claim for disability benefits, arose from the employment injury, covered by the 1928 Act (former § 36-501 et seq.). *Shea v. Director, Office of Workers' Comp. Programs*, 929 F.2d 736 (D.C. Cir. 1991).

Injuries incurred before July 26, 1982 continue to be governed by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

**Choice of suits.** — Under the District of Columbia Workers' Compensation Act, an employee injured at work is not required to choose immediately between filing a workers' compensation claim and suing an allegedly liable third party. *Smith v. Ogden Allied Servs., Inc.*, 842 F. Supp. 571 (D.D.C. 1994).

**Exclusive remedy provisions.** — The exclusive remedy provisions of the Workers' Compensation Act do not bar an employee from seeking uninsured motorist benefits from his employer. *Holmes v. Washington Metro. Area Transit Auth.*, 731 F. Supp. 1115 (D.D.C. 1990).

**Scope of review.** — Court of Appeals scope of review is generally limited to determining whether the interpretation by the agency charged with administering the section is unreasonable or contrary to existing law. *Ceco Steel, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1062 (1989).

**Jurisdiction.** — For the purposes of primary jurisdiction, intentional tort claims under this chapter should be governed by the same standards as the issue whether the injury occurred in the course of employment. *Grillo v. National Bank*, App. D.C., 540 A.2d 743 (1988).

**Actions not confined exclusively to Worker's Compensation Act.** — Where plaintiff employee's common law tort claims were inextricably linked to her sexual harassment claim, a cause of action not covered by the Federal Employee's Compensation Act, plaintiff's right to recovery for such torts was not confined exclusively to the Workers' Compensation Act. *Webb v. Hyman*, 861 F. Supp. 1094 (D.D.C. 1994).

**Corporate employer.** — "Employer," in the context of a corporation, is a person who is realistically the alter ego of the corporation and not merely a foreman, supervisor, or manager. *Rustin v. District of Columbia*, App. D.C., 491 A.2d 496, cert. denied, 474 U.S. 946, 106 S. Ct. 343, 88 L. Ed. 2d 290 (1985).

**Unilateral action by employee.** — The Workers' Compensation Act does not contemplate protection of unauthorized unilateral action by the employee but instead establishes procedures by which an injured employee is to seek compensation from his employer. *Dyson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1065 (1989).

**No right to benefits where employee resigns for economic reasons.** — There is no right to compensation benefits when an employee resigns, not for reasons related to the injury or disability, but for economic reasons to take a better paying job. *Powers v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1068 (1989).

**Pre-existing condition.** — Work-related aggravation of a pre-existing condition can be compensable under the law of workers' compen-

sation. *Spartin v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 564 (1990).

A post-Act aggravation of a pre-existing injury found to be compensable under the 1979 Act. *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

**Recurrence of prior condition.** — If the "recurrence" resulted from a work-related trauma or event — then it constituted a compensable aggravation of a prior condition. *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

**Natural progression of degenerative disease.** — Claim for workers' compensation was denied where the worsening of an employee's degenerative cervical and lumbar disk disease was due to the natural progression of a degenerative disease rather than from the aggravation of a preexisting condition in the course of employment. *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 667 A.2d 310 (1995).

**Unusual exertion test held inapplicable.** — The unusual exertion test cannot be applied where claimant was engaged in job-related activities both stressful in themselves and made more so by immediate circumstances, and was engaged in that work at or near the time of his injury and met his burden of proving an accidental injury within the meaning of this chapter. *Capital Hilton Hotel v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 565 A.2d 981 (1989).

**"Physical impairment."** — Employer failed to establish that its employee's methadone maintenance constituted a previous physical impairment. *Red Star Express v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 606 A.2d 161 (1992).

Substantial evidence did not exist to support employer's contention that methadone maintenance increased the risk that the employee would suffer a greater disability if injured or that employer would reasonably fear such a risk. *Red Star Express v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 606 A.2d 161 (1992).

**"Arising out of" and "accidental injury" construed.** — The elements of "arising out of" and "accidental injury" in paragraph (12) are conceptually similar to the extent that both entail inquiry into causation. *Capital Hilton Hotel v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 565 A.2d 981 (1989).

Injury suffered by employee in off-duty hours in an apartment provided him rent-free by his employer was not a compensable injury. *Mosley v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 573 A.2d 776 (1990).

**Arising out of and in the course of employment.** — Applying the positional-risk standard, bus driver injuries during 20-minute



lunch break did not arise out of her employment where her lunch breaks were completely unsupervised and she was free to go anywhere or do anything she wanted during them. *Grayson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 516 A.2d 909 (1986).

Attack was neither occasioned by work-related stress nor by a work-related aggravation of a pre-existing condition but rather was simply the natural consequence of his atherosclerosis. *Whitmore v. AFIA Worldwide Ins.*, 837 F.2d 513 (D.C. Cir. 1988).

Employees who are physically attacked by third parties while in the performance of their employment duties are typically covered by workers' compensation statutes; all that is required is that the obligations or conditions of employment create a zone of special danger that leads to the injury. *Grillo v. National Bank*, App. D.C., 540 A.2d 743 (1988).

Plaintiff's theory, that employee's murder by bank robber was the result of the intentional acts of the employer bank since the bank knew with substantial certainty that the employee would be killed in the absence of installation of bullet-proof safety glass at the teller window, was incorrect. *Grillo v. National Bank*, App. D.C., 540 A.2d 743 (1988).

Claim for intentional infliction of emotional distress, based on allegations of sexual harassment, did not reflect an "injury" compensable under the Workers' Compensation Act; it did not "arise out of" employment and was not inflicted by a third person "because of" employment. *Estate of Underwood v. National Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

**Emotional injury claim.** — In cases of emotional injury caused by job stress, a claimant must show that his current job conditions are unusually stressful as compared to employment conditions in general, not as compared to his work history. *Spartin v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 564 (1990).

Emotional injuries resulting from job stress are, under certain circumstances, compensable "accidental injuries" under the Workers' Compensation Act. *Sturgis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 629 A.2d 547 (1993).

The compensability of emotional injuries is determined by an objective standard, i.e., the claimant must show that the actual working conditions could have caused similar emotional injury in an individual who was not significantly predisposed to such injury. *Sturgis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 629 A.2d 547 (1993).

The relevant inquiry in determining the compensability of emotional injuries focuses on whether the stresses of the job were so great that they could have caused harm to the average worker. *Sturgis v. District of Columbia*

*Dep't of Emp. Servs.*, App. D.C., 629 A.2d 547 (1993).

Emotional injuries resulting from job stress are, in appropriate circumstances, compensable "accidental injuries" under this section; in order for a claimant to establish that an emotional injury arises out of the mental stress or mental stimulus of employment, the claimant must show that actual conditions of employment, as determined by an objective standard and not merely the claimant's subjective perception of his working conditions, were the cause of his emotional injury. The objective standard is satisfied where the claimant shows that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury. *Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 451 (1996).

**Causation in emotional injury claim.** — In order for a claimant to establish that an emotional injury arises out of the mental stress or mental stimulus of employment, the claimant must show that actual conditions of employment, as determined by an objective standard and not merely the claimant's subjective perception of his working conditions, were the cause of his emotional injury. The objective standard is satisfied where the claimant shows that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury. *Spartin v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 564 (1990).

A District of Columbia agency's application of an objective causal test to petitioner's claim of emotional injury was not inconsistent with the Worker's Compensation Act. *Porter v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 625 A.2d 886 (1993).

To successfully show compensable emotional injuries, a claimant must establish that a particular incident or situation at work was a significant stressor that could reasonably be expected to affect a person of ordinary sensibilities in the same way that it affected the claimant. *Sturgis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 629 A.2d 547 (1993).

The pertinent question in determining whether an emotional injury arises out of the mental stress or mental stimulus of employment is whether the stresses of the job were so great that they could have caused harm to the average worker. *Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 451 (1996).

**Emotional injury not caused by accident.** — There was substantial evidence in the record which supported the hearing examiner's decision that a gurney accident did not cause petitioner's disabling depression. *Porter v. Dis-*



trict of Columbia Dep't of Emp. Servs., App. D.C., 625 A.2d 886 (1993).

**Emotional injury caused by sexual harassment not compensable.** — When emotional distress allegedly attributable to sexual harassment (in contrast with some other cause) results in disabling injuries in fact, the language of the Workers' Compensation Act demonstrates that such results are not statutory "injuries," and thus are not compensable disabilities. *Estate of Underwood v. National Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

**Suicide attempt did not bar emotional injury claim.** — Claim of intentional infliction of emotional distress was not barred by the statutory remedy of worker's compensation where under District of Columbia law, a suicide attempt is deemed to have broken the causal chain between any negligent act committed earlier and the suicide victim's injury. *Chung v. Lee*, 852 F. Supp. 43 (D.D.C. 1994).

**Pre-1980 claim covered by Longshoremen's and Harbor Workers' Compensation Act.** — Workman's compensation claim arising before the District of Columbia Workers' Compensation Act was enacted in 1980 is governed by Longshoremen's and Harbor Workers' Compensation Act. *Crum v. General Adjustment Bureau*, 738 F.2d 474 (D.C. Cir. 1984).

**Construction of former worker's compensation law by federal court.** — The D.C. Workers' Compensation Act of 1928 (former § 36-501 et seq.) was a "local" law, and deference of the U.S. District Court to the construction of the District of Columbia Court of Appeals was held proper. *Hall v. C & P Tel. Co.*, 793 F.2d 1354 (D.C. Cir. 1986).

**Application of certain amendments of federal Longshoremen's Act.** — Amendments by Congress to the Longshoremen's Act passed after the effective date of the repeal of the District of Columbia Workers' Compensation Law of 1928 have no bearing whatsoever on the rights of litigants who were awarded workers' compensation because of injuries incurred in land-based occupations in the District of Columbia. *O'Connell v. Maryland Steel Erectors, Inc.*, App. D.C., 495 A.2d 1134 (1985), cert. denied, 475 U.S. 1066, 106 S. Ct. 1378, 89 L. Ed. 2d 603 (1986).

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**General contractors.** — Although it is sometimes appropriate to constructively deem a general contractor the "employer" of a person

clearly not its employee, the statutory interpretation is appropriate only when the actual employer, the subcontractor, defaults on its statutory obligation under § 36-303 and the general contractor steps in to secure payment. *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

**"Wage stacking" permitted.** — This chapter permits the Department of Employment Services to take into account, in computing benefits awarded under the Workers' Compensation Act, not only income earned from the employer whose work occasioned the injury, but also income from another job the injured worker concurrently held. *MCM Parking Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 510 A.2d 1041 (1986).

**Income from business not wages.** — Income from a business owned by the claimant, even though he contributes some work to it, should not be used to reduce disability; the general rule is that profits derived from a business are not considered as earnings and cannot be accepted as a loss of earning power unless they are almost entirely the result of the claimant's personal management and endeavor. *Washington Post v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 675 A.2d 37 (1996).

**Travel expense payments not wages.** — Unlike payments such as tips and bonuses, travel expense payments do not constitute true economic benefits; rather, they are simply reimbursements to the claimant for expenses he or she would not otherwise incur, and are thus not subject to inclusion as wages. *Mason v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 644 (1989).

**Specific traumatic injury not required.** — This chapter does not require proof of a specific traumatic injury as the basis for compensation. It is sufficient to show that a work condition or activity which is gradual or progressive in nature potentially resulted in or contributed to the disability. *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), aff'd, App. D.C., 667 A.2d 310 (1995).

**"Accidental injury" language unchanged by D.C. Law 3-77.** — In enacting D.C. Law 3-77, the District of Columbia Council made no change to the language of the previously applicable federal act (the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950) regarding "accidental injury." *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 506 A.2d 1127 (1986).

**"Accidental injury" includes unexpected failure within human frame.** — The statutory language "accidental injury" used in paragraph (12) of this section does not require that an unusual incident be the cause of the injury,

but is satisfied if something unexpectedly goes wrong within the human frame. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 506 A.2d 1127 (1986); *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), *aff'd*, App. D.C., 667 A.2d 310 (1995).

**Evidence held sufficient to support conclusion that employee did not suffer compensable injury.** — See *McEvily v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 500 A.2d 1022 (1985).

**Cited in** *Pfister v. Director, Office of Workers' Comp. Programs*, 675 F.2d 1314 (D.C. Cir. 1982); *Stevenson v. Linens of Week*, 688 F.2d 93 (D.C. Cir. 1982); *Hatter v. George A. Fuller Co.*, 110 WLR 2221 (Super. Ct. 1982); *Morrison-Knudsen Constr. Co. v. Director, Office of Workers' Comp. Programs*, 461 U.S. 624, 103 S. Ct. 2045, 76 L. Ed. 2d 194 (1983); *Carey v. Crane Serv. Co.*, App. D.C., 457 A.2d 1102 (1983); *Gordon v. Raven Sys. & Research*, App. D.C., 462 A.2d 10 (1983); *In re Metro Subway Accident Referral*, 630 F. Supp. 385 (D.D.C. 1984), *aff'd sub nom. Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), *cert. denied*, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987); *Carter v. Director, Office of Workers' Comp. Programs*, 751 F.2d 1398 (D.C. Cir. 1985); *Donovan v. Washington Metro. Area Transit Auth.*, 614 F. Supp. 1419 (D.D.C. 1985), *aff'd sub nom. Brock v. Washington Metro. Area Transit Auth.*, 796 F.2d 481 (D.C. Cir. 1986), *cert. denied*, 481 U.S. 1013, 107 S. Ct. 1887, 95 L. Ed. 2d 494 (1987); *Thompson v. United States*, 670 F. Supp. 5 (D.D.C. 1985); *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 103 (1985); *Brandt v. Stidham Tire Co.*, 785 F.2d 329 (D.C. Cir. 1986); *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986); *Downey v. Firestone Tire & Rubber Co.*, 630 F. Supp. 676 (D.D.C. 1986); *Featherstone v. Omni Constr., Inc.*, 114 WLR 101 (Super. Ct. 1986); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 519 A.2d 704 (1987); *Gustafson v. International Progress Enters.*, 832 F.2d 637 (D.C. Cir. 1987); *Stark v. Washington Star Co.*, 833 F.2d 1025 (D.C. Cir. 1987); *Bechtel Assocs. v. Sweeney*, 834 F.2d 1029 (D.C. Cir. 1987); *Greenfield v. Volpe Constr. Co.*, 849

F.2d 635 (D.C. Cir. 1988); *Jackson v. District of Columbia Employees' Comp. Appeals Bd.*, App. D.C., 537 A.2d 576 (1988); *Thomas v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 547 A.2d 1034 (1988); *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988); *Licor v. Washington Metro. Area Transit Auth.*, 879 F.2d 901 (D.C. Cir. 1989); *Greenwood's Transf. & Storage Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 553 A.2d 1246 (1989); *Bender v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 1205 (1989); *District of Columbia v. Thompson*, App. D.C., 570 A.2d 277 (1990), *modified*, App. D.C., 593 A.2d 621, *cert. denied*, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331 (1991); *Lyles v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 572 A.2d 81 (1990); *Moore v. Ronald HSU Constr. Co.*, App. D.C., 576 A.2d 734 (1990); *Teal v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 580 A.2d 647 (1990); *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990); *Edgerton v. Washington Metro. Area Transit Auth.*, 925 F.2d 422 (D.C. Cir. 1991); *Greater Wash. Bd. of Trade v. District of Columbia*, 948 F.2d 1317 (D.C. Cir. 1991), *aff'd*, 506 U.S. 125, 113 S. Ct. 580, 121 L. Ed. 2d 513 (1992); *Warner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 587 A.2d 1091 (1991); *Abramson Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 596 A.2d 549 (1991); *Cunningham v. George Hyman Constr. Co.*, App. D.C., 603 A.2d 446 (1992); *Stewart v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 606 A.2d 1350 (1992); *Baker v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 611 A.2d 548 (1992); *Dominion Caisson Corp. v. Clark*, App. D.C., 614 A.2d 529 (1992); *Underwood v. Washington Post Employees Fed. Credit Union*, 120 WLR 1817 (Super. Ct. 1992); *Allied Sec., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 621 A.2d 824 (1993); *C & P Tel. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994); *Harris v. District of Columbia Dep't of Emp. Serv.*, App. D.C., 648 A.2d 672 (1994); *Burns v. Director, Office of Workers' Comp. Programs*, 41 F.3d 1555 (D.C. Cir. 1994); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995); *Tatum v. Hyatt Corp.*, 918 F. Supp. 5 (D.D.C. 1994).

## § 36-302. Administration; annual report to Council.

(a) The Mayor shall administer the provisions of this chapter, and shall make such rules and regulations, appoint and fix the compensation of such personnel, and make such expenditures as may be necessary. All expenditures of the Mayor in the administration of this chapter shall be allowed and paid as provided in § 36-341 upon the presentation of itemized vouchers therefor approved by the Mayor.



(b) The Mayor shall report annually to the Council of the District of Columbia on the status of the workers' compensation program. The report shall include, but is not limited to, the following information: Total number of cases, total number of lost time cases, number of medical only cases, number of cases where no compensation was paid, number of permanent partial disability scheduled awards, number of permanent partial disability nonscheduled awards, number of permanent total disability cases, number of cases in which claimant was represented by an attorney, cumulative total of attorney fees paid, number of cases controverted, number of controverted cases decided in favor of employer/employee, the growth in the assigned risk plan, and the number of cases in and the future liability of the special fund. (July 1, 1980, D.C. Law 3-77, § 3, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Workers' Compensation Equity Amendment Act Rulemaking Approval Resolution of 1995.** — Pursuant to Proposed Resolution 11-177, deemed approved October 11, 1995, Council approved proposed rules to implement the Workers' Compensation Equity Amendment Act of 1990.

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**Enactment of chapter not beyond scope of legislative authority.** — District of Columbia Council did not exceed its legislative au-

thority under the District of Columbia Self-Government and Governmental Reorganization Act when it enacted this chapter by D.C. Law 3-77. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

**Jurisdiction.** — For the purposes of primary jurisdiction, intentional tort claims under this chapter should be governed by the same standards as the issue whether the injury occurred in the course of employment. *Grillo v. National Bank*, App. D.C., 540 A.2d 743 (1988).

**Cited in** *Hughes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 567 (1985); *Grayson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 516 A.2d 909 (1986); *Reichley v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 244 (1987); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989).

## § 36-303. Coverage.

(a) Except as provided in subsections (a-1) through (a-3) of this section, this chapter shall apply to:

(1) The injury or death of an employee that occurs in the District of Columbia if the employee performed work for the employer, at the time of the injury or death, while in the District of Columbia; and

(2) The injury or death of an employee that occurs outside the District of Columbia if, at the time of the injury or death, the employment is localized principally in the District of Columbia.

(a-1) No employee shall receive compensation under this chapter and at any time receive compensation under the workers' compensation law of any other state for the same injury or death.

(a-2) This chapter shall not apply if the employee injured or killed was a casual employee except that for the purposes of this chapter, casual, occasional, or incidental employment outside of the District of Columbia by a District of Columbia employer of an employee regularly employed by the



employer within the District of Columbia shall be construed to be employment within the District of Columbia.

(a-3) An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this chapter while such employee is temporarily or intermittently within the District of Columbia doing work for such nonresident employer, if such employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of such other state, so as to cover such employee's employment while in the District of Columbia. The benefits under this chapter or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in the District of Columbia.

(b) Every employer subject to this chapter shall be liable for compensation for injury or death without regard to fault as a cause of the injury or death.

(c) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(d) Liability for compensation shall not apply where injury to the employee was occasioned solely by his intoxication or by his willful intention to injure or kill himself or another.

(e) The requirements of this chapter shall apply with regard to the nonprisoners employed in a prison industries program operating on the grounds of a District correctional facility, whether within the District or elsewhere, and maintained in accordance with the Prison Industries Act of 1996. The requirements of this chapter also shall apply with regard to prisoners employed in a prison industry approved under the Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program as defined in § 24-458.1(1). (July 1, 1980, D.C. Law 3-77, § 4, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(b), 37 DCR 6890; May 8, 1996, D.C. Law 11-117, § 18(b), 43 DCR 1179.)

**Section references.** — This section is referred to in § 36-304.

**Effect of amendments.** — D.C. Law 11-117 added (e).

**Legislative history of Law 3-77.** — See note to § 36-301.

**Legislative history of Law 8-198.** — See note to § 36-342.1.

**Legislative history of Law 11-117.** — Law 11-117, the "Prison Industries Act of 1996," was introduced in Council and assigned Bill No. 11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 8, 1996.

**Mayor authorized to issue rules.** — See note to § 36-301.

**Construction.** — The District of Columbia Workers' Compensation Act of 1928 is a "local" law, even though the statute merely applies the terms of a federal statute (the Longshoremen's and Harbor Workers' Act of 1927), which is national in scope and the court owes the same deference to the D.C. Court of Appeals' construction of the 1928 D.C. Compensation Act as it would accord a decision of the highest court of a state interpreting state law. *Hall v. C & P Tel. Co.*, 809 F.2d 924 (D.C. Cir. 1987).

**Claims arising before effective date of this chapter.** — With respect to claims arising before effective date of this chapter, Longshoreman's Act applies with certain limited exceptions to all employers in the District of Columbia. *Garrett v. Washington Air Compressor Co.*, App. D.C., 466 A.2d 462 (1983).

The District of Columbia Workers' Compensation Act of 1979 covers a worker's injury or disease if the employment events giving rise to

the injury occurred before the 1979 Act took effect, but the worker did not become aware of the injury and its job-relatedness until after that time, unless there is no subject matter jurisdiction of a claim under that act or other state law, in which event, to avoid depriving an injured worker of any workers' compensation coverage, the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950, will apply. *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989).

Injuries incurred before July 26, 1982 continue to be governed by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

**Aggravation of pre-Act injuries.** — Post-Act aggravation of a pre-existing injury found to be compensable under the 1979 Act. *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

**Benefit of payments.** — Although payments will benefit the employer, that does not suggest that the payment will not also still benefit employees. The fact that the employer is ultimately liable for the workers' compensation liability does not change the fact that payment of the premium will benefit the employees by ensuring their workers' compensation insurance coverage is still in force and is a benefit within 11 U.S.C. § 507(a)(4). In re *Gerald T. Fenton, Inc.*, 178 Bankr. 582 (Bankr. D.D.C. 1995).

**"Principally located" defined.** — Construing term "principally located in the District of Columbia," the Director of the Department of Employment Services formulated the following test: (1) The place(s) of the employer's business office(s) or facility(ies) at which or from which the employee performs the principal service(s) for which he was hired; or (2) if there is no such office or facility at which the employee works, the employee's residence, the place where the contract is made, and the place of performance; or (3) if neither (1) or (2) is applicable, the employee's base of operations. *Hughes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 567 (1985).

**Coverage denied employee failing to show sufficient substantial connections with District.** — Where employee's employment-related contact with the District consisted of a single trip into the District for which no travel allowance was received and where employer's presence in the District by virtue of ticket offices it operates is unconnected with employee's job as a mechanic at an airport outside the District, employee has failed to show substantial connections sufficient to invoke the provisions of the Worker's Compensation Act. *Pfister v. Director, Office of Workers'*

*Comp. Programs*, 675 F.2d 1314 (D.C. Cir. 1982).

**Evidence sufficient to establish jurisdiction.** — See *Regional Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 600 A.2d 1077 (1991), cert. denied, 505 U.S. 1206, 112 S. Ct. 2997, 120 L. Ed. 2d 873 (1992).

**Location of injury not conclusive as to coverage.** — Situs of injury is not conclusive in determining coverage under this chapter; the wording of subsection (a) clearly means that whether an injury occurs within or without the District, the claimant suffering the injury will be covered only when "this employment" is principally localized here or does not fall within the exceptions enumerated in paragraphs (1), (2), and (3) [(a-1), (a-2), and (a-3)] of that subsection. *Petrilli v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 629 (1986).

**General contractor as employer.** — Although it is sometimes appropriate to constructively deem a general contractor the "employer" of a person clearly not its employee, the statutory interpretation is appropriate only when the actual employer, the subcontractor, defaults on its statutory obligation under this section and the general contractor steps in to secure payment. *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

A general contractor may be deemed the employer of a person who is not its employee, and hence immune from suit, only when the actual employer — the subcontractor — defaults on its statutory obligation and the general contractor steps in to secure payment. *Dominion Caisson Corp. v. Clark*, App. D.C., 614 A.2d 529 (1992).

**Immunity of general contractor, etc.** — General contractors do not have immunity from tort liability in suits brought by injured employees of subcontractors, where the subcontractors have secured payment of workers' compensation to the employees. *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

**"At the same time" reasonably interpreted to mean "for the same period."** — A determination by the Director of the Department of Employment Services that "at the same time," as used in subsection (a)(1) of this section prior to the 1991 amendment, should be taken to mean "for the same period" serves the stated objective of the D.C. Council to bring the costs and benefits of the District's workers' compensation scheme more in line with those of neighboring jurisdictions; moreover, it does not do violence to the well-established principle that workers' compensation statutes are remedial in nature, and designed to provide protection to the injured worker not available under tradi-



tional tort theories. *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**Aggravation of prior condition.** — If the "recurrence" resulted from a work-related trauma or event — then it constituted a compensable aggravation of a prior condition. *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995).

**Third-party tortfeasor actions.** — A third-party tortfeasor is not immune from actions for negligence under this chapter. *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986).

**United States is not employer under this chapter and is not immune from third-party tortfeasor actions.** *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986).

**Immunity of general contractor from suits by subcontractors' employees.** — Under the District of Columbia Workers' Compensation Act of 1979 a general contractor is not immune from suit by an injured employee of its subcontractor unless the general contractor secures the payment of statutory compensation to the injured employee after the subcontractor fails to secure such compensation. *Hobbs v. KBR Corp.*, 114 WLR 25 (Super. Ct. 1986).

A general contractor does not enjoy statutory immunity from tort suits by its subcontractors' employees as a result of its purchase of workmen's compensation insurance covering those employees. *Featherstone v. Omni Constr., Inc.*, 114 WLR 101 (Super. Ct. 1986).

**Relevant inquiry concerning agency.** — In worker's compensation claim, relevant inquiry concerning question of whether defendant maintenance company was acting as agent for company owning apartment building and was therefore immune from suit was not whether company owning apartment building exercised actual control over defendant but whether it had the right to exercise control over defendant. *Henderson v. Charles E. Smith Mgt., Inc.*, App. D.C., 567 A.2d 59 (1989).

**Evidence sufficient to support finding that employment was "principally localized."** — Washington Redskins players who played games for the team in the District are entitled to worker's compensation as their employment was principally localized in the District for the purpose of the Act. *Pro-Football,*

*Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 588 A.2d 275 (1991).

**Evidence sufficient to support finding that employment was not "principally localized" in District.** — See *Petrilli v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 629 (1986).

**Actual performance vs. contemplated performance in construing term "principally localized."** — Case involving Washington Redskins players who never played a game in the District, who sought worker's compensation, must be remanded to the Director to determine if there must be actual performance or only contemplated performance for the player's employment to be considered principally localized in the District. *Pro-Football, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 588 A.2d 275 (1991).

**Benefits received from another state no shield to exclusivity of remedy.** — Effort by plaintiff/passenger injured in automobile accident, in action against co-worker/driver, to use her benefits received under the Maryland Workers' Compensation Act as a shield against the preclusive effect of § 36-304(b) held unavailing. The "entitlement" to which that section refers is entitlement upon the occurrence of an injury, i.e., at the time of injury. It is that automatic liability for which the employer must purchase insurance. *Cruz v. Paige*, App. D.C., 683 A.2d 1121 (1996).

**Cited in** *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983); *Thompson v. United States*, 670 F. Supp. 5 (D.D.C. 1985); *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 103 (1985); *Grayson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 516 A.2d 909 (1986); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 519 A.2d 704 (1987); *Ringgold v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 241 (1987); *Reichley v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 244 (1987); *Bender v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 1205 (1989); *Railco Multi-Construction Co. v. Gardner*, 902 F.2d 71 (D.C. Cir. 1990); *Mosley v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 573 A.2d 776 (1990).

## § 36-304. Exclusiveness of liability and remedy.

(a) The liability of an employer prescribed in § 36-303 shall be exclusive and in place of all liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law on account of such injury or death.



(b) The compensation to which an employee is entitled under this chapter shall constitute the employee's exclusive remedy against the employer, or any collective-bargaining agent of the employer's employees and any employee, officer, director, or agent of such employer, insurer, or collective-bargaining agent (while acting within the scope of his employment) for any illness, injury, or death arising out of and in the course of his employment; provided, that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

(c) The furnishing of, or failure to furnish, insurance consultation services related to, in connection with or incidental to an applicable policy of insurance shall not subject the insurer, its agent or employees undertaking to perform such services to liability for damages from injury, death or loss occurring as a result of any act of omission in the course of such services.

(d) This section shall not apply:

(1) If the injury, loss or death occurred during the actual performance of consultation services and was caused by the active negligence of the carrier, its agent or employees which was the proximate cause of the injury, death or loss; or

(2) To any consultation services required to be performed under the provisions or a written service contract not incidental to an applicable policy of insurance. (July 1, 1980, D.C. Law 3-77, § 5, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-335.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Jurisdiction.** — For the purposes of primary jurisdiction, intentional tort claims under this chapter should be governed by the same standards as the issue whether the injury occurred in the course of employment. *Grillo v. National Bank*, App. D.C., 540 A.2d 743 (1988).

**Discrimination claims.** — Where an employee's claim for emotional distress was based on her having been terminated from her job because of her pregnancy, and therefore because of her gender, her claim was not barred by this chapter. *Harvey v. Strayer College, Inc.*, 911 F. Supp. 24 (D.D.C. 1996).

Unless a claimant's injuries clearly are not compensable under the Workers' Compensation Act, the Department of Employee Services, the administrative agency charged with administering workers compensation claims, and not the Superior Court, has primary jurisdiction over employment-related claims by private employees who allege disabilities attributable to intentional infliction of emotional distress. *Es-*

*tate of Underwood v. National Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

**Tort claim for emotional distress could be filed in Supreme Court.** — Because employee's common law tort claim for emotional distress was premised on the same events that underlied her Human Rights Act claim for sexual harassment, her alleged disability fell outside the definition of disabling injuries as a matter of law, and employee was thus free to file suit for emotional distress in Superior Court rather than submitting that claim to the Department of Employment Services. *Estate of Underwood v. National Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

**Metropolitan Transit Authority.** — Washington Metropolitan Area Transit Authority is immune from liability in tort under this section. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987).

Washington Metropolitan Area Transit Authority is a general contractor for purposes of determining its entitlement to Longshoremen's Act immunity as a matter of law. *Keener v.*

Washington Metro. Area Transit Auth., 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987).

Washington Metropolitan Area Transit Authority's immunity under the Longshoreman's Act for claims arising prior to July 28, 1982, is not limited by § 80 of the Washington Metropolitan Area Transit Authority compact concerning liability for contracts and torts. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987) (decision applicable to workers' compensation claims arising prior to July 26, 1982).

**Claims for injuries prior to 1982.** — The repeal of the 1928 Act by the D.C. Council affecting D.C. workers' compensation did not result in a forfeiture of the remedies available at the time of repeal for injuries incurred prior to repeal. D.C. workmen's compensation claimants seeking damages for pre-July 26, 1982, injuries are entitled to the rights and benefits afforded by the 1928 Act as they then existed, and not as they might be modified by subsequent amendment. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987).

**Reinstatement of the Longshoremen's Act.** — Absent explicit statutory language, expressions of intent in a Congressional conference report did not reinstate the Longshoreman's Act which was repealed by the D.C. Council particularly in view of the fact that Congress declined to exercise its reserved right to veto. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987) (decision applicable to workers' compensation claims arising prior to July 26, 1982).

**Law to be interpreted by D.C. courts.** — Contention that because D.C. workers' compensation claims for injuries arising prior to July 26, 1982, are handled by a federal agency, the law is a federal law to be interpreted by federal courts, was rejected. Federal court must defer to D.C. Court of Appeal's interpretation. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987) (decision applicable to workers' compensation claims arising prior to July 26, 1982).

**General contractor as employer.** — Although it is sometimes appropriate to constructively deem a general contractor the "employer" of a person clearly not its employee, the statutory interpretation is appropriate only when the actual employer, the subcontractor, defaults on its statutory obligation under § 36-303 and the general contractor steps in to secure payment. *Meiggs v. Associated Bldrs., Inc.*, App.

D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

The District's workers' compensation scheme has no statutory employer provision extending liability (and corresponding tort immunity) up the ladder of subcontractors to the owner or general contractor. Under the District's scheme, an "employer" is only the entity with whom the employee is in a direct employment relationship. Thus, although the District's scheme also contains an exclusivity provision, it bars common law suits only against the injured employee's immediate employer and allows suits against all others as third parties. *Dominion Caisson Corp. v. Clark*, App. D.C., 614 A.2d 529 (1992).

**Agreement indemnifying one against his own negligence.** — Subsection (b) of this section does not prohibit an agreement indemnifying one against his own negligence. *DiNicola v. George Hyman Constr. Co.*, 110 WLR 897 (Super. Ct. 1982).

**Third-party tortfeasor actions.** — A third-party tortfeasor is not immune from actions for negligence under this chapter. *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986).

The Workers' Compensation Act reflects a quid pro quo between employees and employers; it does not preclude all suits against third parties. *Washington Metro. Area Transit Auth. v. Reid*, App. D.C., 666 A.2d 41 (1995).

**United States is not employer under this chapter and is not immune from third-party tortfeasor actions.** *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986).

**Employee prevented from seeking damages against employer.** — The District of Columbia Workers' Compensation Act prevents an employee who has suffered a work-related injury from seeking damages against his or her employer; the injured employee's only recourse is to seek compensation under the Act. *Rivers & Bryan, Inc. v. HBE Corp.*, App. D.C., 628 A.2d 631 (1993).

**Benefits received from another state no shield to exclusivity of remedy.** — Effort by plaintiff/passenger injured in automobile accident, in action against co-worker/driver, to use her benefits received under the Maryland Workers' Compensation Act as a shield against the preclusive effect of subsection (b) held unavailing. The "entitlement" to which that section refers is entitlement upon the occurrence of an injury, i.e., at the time of injury. It is that automatic liability for which the employer must purchase insurance. *Cruz v. Paige*, App. D.C., 683 A.2d 1121 (1996).

**Immunity of general contractor from suits by subcontractors' employees.** — Under the District of Columbia Workers' Compensation Act of 1979 a general contractor is not immune from suit by an injured employee of its



subcontractor unless the general contractor secures the payment of statutory compensation to the injured employee after the subcontractor fails to secure such compensation. *Hobbs v. KBR Corp.*, 114 WLR 25 (Super. Ct. 1986).

A general contractor does not enjoy statutory immunity from tort suits by its subcontractors' employees as a result of its purchase of workmen's compensation insurance covering those employees. *Featherstone v. Omni Constr., Inc.*, 114 WLR 101 (Super. Ct. 1986).

Under the Workmen's Compensation Act of 1928, a general contractor that did not itself obtain compensation for an injured worker was immune from tort liability when the subcontractor that directly employed the worker met its statutory obligation to provide compensation. *Estep v. Construction Gen., Inc.*, App. D.C., 546 A.2d 376 (1988).

General contractor is not included in this list of excluded persons in subsection (b). *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

General contractors do not have immunity from tort liability in suits brought by injured employees of subcontractors, where the subcontractors have secured payment of workers' compensation to the employees. *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

**Employer cannot be held jointly liable with another.** — Under the exclusivity provision of the act the employer cannot be liable in tort to the employee for the injury, and therefore cannot be jointly liable with a third party. To conclude otherwise would be to sanction a form of indemnity that is, in actuality, solely an extreme form of contribution. *Myco, Inc. v. Super Concrete Co.*, App. D.C., 565 A.2d 293 (1989).

**Tort claims against independent contractors.** — Negligence of employee allegedly controlled and supervised by an independent contractor operating the business can serve as the basis for a negligence claim against the independent contractor, even though the plaintiff has recovered worker's compensation from the business' owner. *Beegle v. Restaurant Mgt., Inc.*, App. D.C., 679 A.2d 480 (1996).

The exclusivity provisions of state workers' compensation statutes are generally held to preclude indemnity in all but a few specified instances. This is due, in part, to a recognition that there is little appreciable difference between requiring an employer to reimburse a

third party's payment to a worker in separate litigation and requiring the employer to pay the worker that amount in damages directly, an action explicitly precluded by the exclusivity provisions of most workers' compensation laws. *Myco, Inc. v. Super Concrete Co.*, App. D.C., 565 A.2d 293 (1989).

**Intermediate subcontractor's liability.** — The immunity extended to Washington Metropolitan Area Transit Authority as an immediate employer is extended to intermediate subcontractors as well as to general contractors. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987) (decision applicable to workers' compensation claims arising prior to July 26, 1982).

**Employer owes no independent duty to manufacturer of equipment.** — The exclusivity provision insulates an employer from owing an independent duty to the manufacturer of equipment to maintain and use that equipment so as to protect the manufacturer from actions for damages on account of an employee's injury or death. *Myco, Inc. v. Super Concrete Co.*, App. D.C., 565 A.2d 293 (1989).

**Employee's uninsured motorist claim.** — The exclusive remedy provisions of the Workers' Compensation Act do not bar an employee from seeking uninsured motorist benefits from his employer. *Holmes v. Washington Metro. Area Transit Auth.*, 731 F. Supp. 1115 (D.D.C. 1990).

**Relevant inquiry concerning agency.** — In worker's compensation claim, relevant inquiry concerning question of whether defendant maintenance company was acting as agent for company owning apartment building and was therefore immune from suit was not whether company owning apartment building exercised actual control over defendant but whether it had the right to exercise control over defendant. *Henderson v. Charles E. Smith Mgt., Inc.*, App. D.C., 567 A.2d 59 (1989).

**Cited in** *Thompson v. United States*, 670 F. Supp. 5 (D.D.C. 1985); *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988); *Moore v. Ronald HSU Constr. Co.*, App. D.C., 576 A.2d 734 (1990); *4934, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 605 A.2d 50 (1992); *Underwood v. Washington Post Employees Fed. Credit Union*, 120 WLR 1817 (Super. Ct. 1992); *Grunley Constr. Co. v. Conway Corp.*, App. D.C., 676 A.2d 477 (1996).



### § 36-305. Commencement of compensation; maximum compensation.

(a) No compensation shall be allowed for the first 3 days of the disability, except the benefits provided for in § 36-307; provided, that in case the injury results in disability of more than 14 days the compensation shall be allowed from the date of the disability.

(b) Compensation for disability or death shall not exceed the average weekly wages of insured employees in the District of Columbia or \$396.78, whichever is greater.

(c) The minimum compensation for total disability or death shall be 25% of the maximum compensation.

(d) For the purposes of this section, the average weekly wage of insured employees in the District of Columbia shall be determined by the Mayor as follows: on or before November 1st of each year, the total wages reported on contribution reports for employees, excluding employees of the government of the District of Columbia, and the government of the United States, to the District Unemployment Compensation Board for the year ending on the preceding June 30th shall be divided by the average monthly number of such employees (determined by dividing the total employees reported for the preceding year, excluding employees of the government of the District of Columbia, and the government of the United States by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage as so determined shall be applicable for the year beginning the following January 1st.

(e) The average weekly wage shall not be deemed to have changed for any calendar year unless the computation in subsection (d) of this section results in an increase or decrease of \$2 or more, raised to the next even dollar. (July 1, 1980, D.C. Law 3-77, § 6, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-306.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated

his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**Cited in** *C & P Tel. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994).

### § 36-306. Supplemental allowance.

(a) When the average weekly wage has changed as provided for in § 36-305, any person who has been totally and continuously disabled or any widow or widower who is receiving payments for income benefits under this chapter in amounts per week less than the new maximum for total disability or death shall receive weekly from the carrier, without application, an additional supplemental allowance calculated by the Mayor in accordance with the provisions of subsections (b) and (c) of this section; provided, that such allowance shall not commence to accrue and be payable until the average

weekly wage exceeds \$396.78. The Mayor shall notify the carrier of the amount of such additional supplemental allowance.

(b) In any case where a totally disabled person, or widow or widower is receiving the maximum weekly income benefit applicable at the time such award was made under this chapter, the supplemental allowance shall be in amount which, when added to such award, will equal the new maximum weekly benefit.

(c) In any case where a totally disabled person, or a widow or widower is receiving less than the maximum weekly income benefit rate applicable at the time such award was made under this chapter, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the new maximum determined by multiplying it by a fraction, the numerator of which is his present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

(d) No supplemental allowance referred to in subsections (b) and (c) of this section shall exceed 5% of the maximum weekly benefit received the preceding benefit year. (July 1, 1980, D.C. Law 3-77, § 7, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**Meaning of "totally and continuously disabled."** — The use of the word "totally" in subsection (a) of this section establishes that those with "partial" disabilities are not eligible

for supplemental allowances. *Hively v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 1158 (1996).

Although "continuously" and "permanently" have slightly different meanings and therefore are not entirely interchangeable, and the Council's use of the word "continuously" in subsection (a) of this section has created some ambiguity as to who is eligible for supplemental allowances, nonetheless, claimants with temporary disabilities are not eligible to receive supplemental allowances. *Hively v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 1158 (1996).

## § 36-307. Medical services, supplies, and insurance.

(a) The employer shall furnish such medical, surgical, vocational rehabilitation services, including necessary travel expenses and other attendance or treatment, nurse and hospital service, medicine, crutches, false teeth or the repair thereof, eye glasses or the repair thereof, artificial or any prosthetic appliance for such period as the nature of the injury or the process of recovery may require. The employer shall furnish such additional payment as the Mayor may determine is necessary for the maintenance of an employee undergoing vocational rehabilitation, not to exceed \$50 a week.

(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter.

(2) For purposes of this subsection, the phrase "eligible to receive" means:

(A) An employee is away from work due to a job-related injury for which the employee has filed a claim for workers' compensation benefits under this chapter; or

(B) An employer has knowledge of a job-related injury of an employee who is away from work due to the job-related injury pursuant to which workers' compensation benefits may become due under § 36-315.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

(5) An employer shall be reimbursed for the provision of health insurance coverage required by this subsection from the special fund established in § 36-340. If an employer fails to provide health insurance coverage and an employee subsequently procures the insurance coverage and receives reimbursement for the procurement of insurance coverage from the employer pursuant to subsection (d) of this section, the employer shall be reimbursed from the special fund only for the amount that the employer would have paid for the coverage if the employer had provided the coverage.

(b)(1) Repealed.

(2) Repealed.

(3) The employee shall have the right to choose an attending physician to provide medical care under this chapter. If, due to the nature of the injury, the employee is unable to select a physician and the nature of the injury requires immediate treatment and care, the employer shall select a physician for him. Where medically necessary or advisable, or at the request of the employee, the attending physician shall consult with the employee's personal physician.

(4) The Mayor shall supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have the authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may order a change of physician or hospital when in his judgment such change is necessary or desirable.

(5) Each person who provides medical care or service under this chapter shall utilize a standard coding system for reports and bills pursuant to rules issued by the Mayor. Medical care and service shall be billed at a usual and customary rate.

(6) Any medical care or service furnished or scheduled to be furnished under this chapter shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively.

(A) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this chapter and to allow for the performance of competent utilization review, a



utilization review organization or individual used pursuant to this chapter shall be certified by the Utilization Review Accreditation Commission.

(B) When it appears that the necessity, character, or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee, or employer may initiate review by a utilization review organization or individual.

(C) If the medical care provider disagrees with the opinion of the utilization review organization or individual, the medical care provider shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

(D) Disputes between a medical care provider, employee, or employer on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing on the dispute by the medical care provider, employee, or employer. A party who is adversely affected or aggrieved by the decision of the Mayor may petition for review of the decision by the District of Columbia Court of Appeals.

(E) The employer shall pay the cost of a utilization review if the employee seeks the review and is the prevailing party.

(7) Medical care providers shall not hold employees liable for service rendered in connection with a compensable injury under this chapter.

(c) Vocational rehabilitation shall be designed, within reason, to return the employee to employment at a wage as close as possible to the wage that the employee earned at the time of injury. The Mayor shall monitor the provision of vocational rehabilitation of disabled employees and determine the adequacy and sufficiency of such rehabilitation. Where, in the judgment of the Mayor, the employer fails or refuses to provide adequate and sufficient rehabilitation services as required in subsection (a) of this section, the Mayor may order that the supplier of such services be changed, and may use the special fund provided in § 36-343 in such amounts as may be necessary to procure such services, including necessary prosthetic appliances or other apparatus. When the Mayor pays for such services out of the special fund, he shall institute proceedings against such employer to recover the amounts expended.

(d) If the employer fails to provide the medical or other treatment, services, supplies, or insurance coverage required to be furnished by subsections (a) and (a-1) of this section, after request by the injured employee, such injured employee may procure the medical or other treatment, services, supplies, or insurance coverage and select a physician to render treatment and services at the expense of the employer. The employee shall not be entitled to recover any amount expended for the treatment, service, or insurance coverage unless the employee requested the employer to furnish the treatment or service or to furnish the health insurance coverage and the employer refused or neglected to do so, or unless the nature of the injury required the treatment or service and the employer or his superintendent or foreman having knowledge of the

injury neglected to provide the treatment or service; nor shall any claim for medical or surgical treatment be valid or enforceable, as against the employer, unless within 20 days following the 1st treatment the physician giving the treatment furnishes to the employer and the Mayor a report of the injury or treatment, on a form prescribed by the Mayor. The Mayor may, however, excuse the failure to furnish such report within 20 days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment or to an examination by a physician selected by the employer, or to accept vocational rehabilitation the Mayor shall, by order, suspend the payment of further compensation, medical payments, and health insurance coverage during such period, unless the circumstances justified the refusal.

(e) Whenever, in the opinion of the Mayor, the injured employee or his employer, a physician has improperly estimated the degree of permanent disability or the extent of temporary disability occasioned by the injury or where in the opinion of such parties a physician recommends a treatment for an injury not generally recognized by the medical community the Mayor shall cause such employee to be examined by another physician selected by the Mayor and to obtain from such physician a report containing his estimate of such disabilities and a recommendation for treatment. If the report of such physician shows that the estimate of the former physician is improper or that the treatment recommended is not one that is generally recognized in the medical community, the Mayor shall have the power in his discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, or, in appropriate cases, to the special fund.

(f) All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons and shall be subject to regulation by the Mayor.

(g) The liability of an employer for medical treatment as provided in this section shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or suit has been brought against such 3rd party. The employer shall, however, have a cause of action against such 3rd party to recover any amounts paid by him for such medical treatment in like manner as provided in § 36-335(b).

(h) When an employer and employee so agree in writing, nothing in this chapter shall be construed to prevent an employee, whose injury or disability has been established in accordance with the provisions of this chapter, from relying in good faith, on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by a duly accredited practitioner thereof, and having nursing services appropriate therewith, without suffering loss or diminution of the compensation benefits under this chapter; provided, the employee shall submit to all physical examinations required by this chapter.

(i) The employee and employer are entitled upon request to all medical reports made pursuant to claims arising under this chapter. (July 1, 1980, D.C.

Law 3-77, § 8, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(c), 37 DCR 6890.)

**Section references.** — This section is referred to in §§ 36-305, 36-319, 36-330, 36-335, and 36-340.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Legislative history of Law 8-198.** — See note to § 36-342.1.

**Mayor authorized to issue rules.** — See note to § 36-301.

**Subsection (a-1)(1) preempted by ERISA.** — The requirement under subsection (a-1)(1) that employers who provide health insurance for their employees must provide equivalent health insurance coverage for injured employees eligible for workers' compensation benefits is preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U.S.C. § 1001 et seq. *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 113 S. Ct. 580, 121 L. Ed. 2d 513 (1992).

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

The Mayor delegated his functions under former paragraph (b)(1) to the Director of the Department of Employment Services, and the director in turn issued regulations governing how physicians' services were to be furnished and how workers' compensation proceedings were to be conducted. *King v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 1067 (1989).

**Right to medical benefits separate from right to income benefits.** — The fact that an employee is no longer eligible to receive disability benefits under § 36-308 does not necessarily preclude her from receiving reimbursement of medical expenses under this section; the right to medical benefits is separate and distinct from the right to income benefits. *Santos v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 536 A.2d 1085 (1988).

**Selection of treating physician.** — Once the employee has selected a treating physician, he may not switch physicians without permission either from the insurer, 7 DCMR § 212.13 (1986), or from the Office of Workers' Compensation, 7 DCMR § 212.14 (1986). *Ceco Steel, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1062 (1989).

Department of Employee Services interpretation that accepting treatment as a result of

emergency room care and reasonable follow-up care does not automatically constitute a selection under paragraph (b)(3) is reasonable and in accordance with the law. *Ceco Steel, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1062 (1989).

**Change of physicians.** — Under regulations issued by the director, an injured employee has the right to choose a treating physician from an approved panel of physicians, or the employer may select a physician from the panel if the employee is unable to do so because of injury. Once a physician from the panel is selected, however, an injured employee shall not change from one physician to another without authorization of the insurer; if an employee is dissatisfied with the medical care being received, he or she must submit a request for change of physicians to the Private Sector Branch of the Office of Workers' Compensation, which may approve a change of physicians if it deems a change to be in the best interest of the employee. *King v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 1067 (1989).

**Burden of scheduling examination.** — Petitioner bears no burden under this section to schedule a medical examination. *C & P Tel. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994).

**Duration of liability.** — There is no indication in the language of the Workers' Compensation Act nor its legislative history that the D.C. Council intended to limit the employer's liability for medical services and supplies to the period of time during which the injured employee receives disability income compensation. *Santos v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 536 A.2d 1085 (1988).

**Expenses of nonpanel physicians referred by panel physician covered.** — Neither the statute nor the regulations expressly denies a claimant compensation for the medical expenses of nonpanel physicians to whom patients have been referred by a panel physician. *Medical Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 565 A.2d 86 (1989).

**Expenses of chiropractor covered.** — The agency was not unreasonable in concluding that the expenses of a chiropractor are covered under the act when a patient is referred for treatment. Although the act and regulations do not specifically include chiropractic treatment, neither do they exclude it. *Medical Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 565 A.2d 86 (1989).

**Allowing referrals deemed proper.** — Allowing referrals is consistent with the policy reasons for adopting a panel system rather than permitting the injured employee to select



any physician. The panel system avoids the selection of medically unqualified physicians, and mitigates the problems of doctor-shopping by the employee seeking a favorable diagnosis. *Medical Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 565 A.2d 86 (1989).

**Referral not constituting unauthorized change in physicians.** — Where the use of a nonpanel doctor was initiated by the panel physician, not the patient, it does not constitute an unauthorized change in physicians. *Medical Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 565 A.2d 86 (1989).

**Cited in** *Snipes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 542 A.2d 832 (1988); *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989); *Thomas v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 547 A.2d 1034 (1988); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989); *Allied Sec., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 621 A.2d 824 (1993).

## § 36-308. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(1) In case of total disability adjudged to be permanent, 66⅔% of the employee's average weekly wages shall be paid to the employee during the continuance thereof. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any 2 thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined only if, as a result of the injury, the employee is unable to earn any wages in the same or other employment;

(2) In case of disability total in character but temporary in quality, 66⅔% of the employee's average weekly wages shall be paid to the employee during the continuance thereof;

(3) In case of disability partial in character but permanent in quality, the compensation shall be 66⅔% of the employee's average weekly wages which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with paragraph (2) or (4) of this subsection respectively, and shall be paid to the employee, as follows:

- (A) Arm lost, 312 weeks' compensation;
- (B) Leg lost, 288 weeks' compensation;
- (C) Hand lost, 244 weeks' compensation;
- (D) Foot lost, 205 weeks' compensation;
- (E) Eye lost, 160 weeks' compensation;
- (F) Thumb lost, 75 weeks' compensation;
- (G) First finger lost, 46 weeks' compensation;
- (H) Great toe lost, 38 weeks' compensation;
- (I) Second finger lost, 30 weeks' compensation;
- (J) Third finger lost, 25 weeks' compensation;
- (K) Toe other than great toe lost, 16 weeks' compensation;
- (L) Fourth finger lost, 15 weeks' compensation;

(M) Compensation for loss of hearing of 1 ear, 52 weeks. Compensation for loss of hearing of both ears, 200 weeks, provided that the Mayor may establish a waiting period, not to exceed 6 months, during which an employee may not file a claim for loss of hearing resulting from nontraumatic causes in his occupational environment until the employee has been away from such environment for such period, and provided further, that nothing in this

subparagraph shall limit an employee's right to file a claim for temporary partial disability pursuant to paragraph (5) of this section;

(N) Compensation for loss of more than 1 phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the 1st phalange shall be one half of the compensation for loss of the entire digit;

(O) Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot;

(P) Compensation for loss of binocular vision or for 80% or more of the vision of an eye shall be the same as for loss of the eye;

(Q) Compensation for loss of 2 or more digits, or 1 or more phalanges of 2 or more digits, of a hand or foot, may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot;

(R) Compensation for permanent total loss of use of a member shall be the same as for loss of the member;

(S) Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member. Benefits for partial loss of vision in 1 or both eyes, or partial loss of hearing in 1 or both ears shall be for a period proportionate to the period benefits are payable for total bilateral loss of vision or total binaural loss of hearing as such partial loss bears to total loss;

(T) The Mayor shall award proper and equitable compensation for serious disfigurement of the face, head, neck or other normally exposed bodily areas not to exceed \$7,500;

(U) In any case in which there shall be a loss of, or loss of use of, more than 1 member or parts of more than 1 member set forth in subparagraphs (A) to (S) of this paragraph, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where 1 injury affects only 2 or more digits of the same hand or foot, subparagraph (Q) of this paragraph shall apply; and

(V)(i) In other cases the employee shall elect:

(I) To have his or her compensation calculated in accordance with the formula set forth in either sub-subparagraph (ii)(I) or (II) of this subparagraph; and

(II) To receive the compensation at the time the employee returns to work or achieves maximum medical improvement.

(ii) The compensation shall be 66⅔% of the greater of:

(I) The difference between the employee's actual wage at the time of injury and the average weekly wage, at the time of injury, of the job that the employee holds after the employee becomes disabled; or

(II) The difference between the average weekly wage, at the time the employee returns to work, of the job that the employee held before the employee became disabled and the actual wage of the job that the employee holds when the employee returns to work.

(iii) If the employee voluntarily limits his or her income or fails to accept employment commensurate with the employee's abilities, the employee's wages after the employee becomes disabled shall be deemed to be the amount the employee would earn if the employee did not voluntarily limit his or her income or did accept employment commensurate with the employee's abilities.

(4) Any compensation to which any claimant would be entitled under paragraph (3) of this section, excepting paragraph (3)(V) of this section, shall, provided the death arises from causes other than the injury, be payable in full to and for the benefit of the persons following:

(A) If there be a surviving widow or widower and no child of the deceased to such widow or widower;

(B) If there be a surviving widow or widower and surviving child or children of the deceased, one half shall be payable to the widow or widower and the other one half to the surviving child or children;

(C) The Mayor may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement, the appointment for such a purpose shall not be necessary;

(D) If there be a surviving child or children of the deceased but no surviving widow or widower, then to such child or children;

(E) If there be no surviving spouse and no surviving children, such unpaid amount of the award shall be paid to the survivors specified in § 36-309 (other than a wife, husband, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in § 36-309(4), but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each.

(5) In case of temporary partial disability, the compensation shall be 66⅔% of the injured employee's wage loss to be paid during the continuance of such disability, but shall not be paid for a period exceeding 5 years. Wage loss shall be the difference between the employee's average weekly wage before becoming disabled and the employee's actual wages after becoming disabled. If the employee voluntarily limits his income or fails to accept employment commensurate with his abilities, then his wages after becoming disabled shall be deemed to be the amount he would earn if he did not voluntarily limit his income or did accept employment commensurate with his abilities.

(6)(A) If an employee receives an injury, which combined with a previous occupational or nonoccupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability and shall be the payment of:

(i) All medical expenses;

(ii) All monetary benefits for temporary total or partial injuries; and

(iii) Monetary benefits for permanent total or partial injuries up to 104 weeks.



(B) The special fund shall reimburse the employer solely for the monetary benefits paid for permanent total or partial injuries after 104 weeks.

(7) In each case, payment of benefits shall be 66⅔% of the employee's average weekly wage.

(8) In any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or an individual or individuals entitled to benefits pursuant to § 36-309, he may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability for the employer for such compensation, notwithstanding §§ 36-316(b) and 36-317. Such settlements are to be the complete and final dispositions of a case and once approved require no further action by the Mayor.

(9) In no event shall the total money allowance payable to an employee or his dependent survivor(s): (1) As compensation for an injury or death under this chapter; (2) as federal old age, and survivors insurance benefits; and (3) from employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (26 U.S.C. § 401 et seq.) and such income maintenance plans solely funded by the employer (computed weekly) exceed in the aggregate the higher of 80% of the employee's average weekly wage or the total of federal payments and employee benefit plans payments. In the event the total aggregate money allowance payable to an employee or his survivor(s) exceeds this limitation, the amounts otherwise payable as compensation or death benefits under this chapter shall be reduced accordingly.

(10) An award for disability may be made after the death of an injured employee from causes other than work-related injury. If the award made is for permanent partial disability, pursuant to paragraph (3)(A) through (U) of this section, the award shall be payable in full pursuant to paragraph (4) of this section. If the award made is for any other category of disability, the amount of the award shall be computed from the date of the injury to the date of death, and shall be payable in full in the same manner as an award payable pursuant to paragraph (4) of this section. (July 1, 1980, D.C. Law 3-77, § 9, 27 DCR 2503; May 10, 1989, D.C. Law 7-231, § 44, 36 DCR 492; Mar. 6, 1991, D.C. Law 8-198, § 2(d), 37 DCR 6890.)

**Section references.** — This section is referred to in §§ 36-324 and 36-340.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Legislative history of Law 7-231.** — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-198.** — See note to § 36-342.1.

**References in text.** — The subject of social security taxes, referred to in the third sentence of paragraph (7) of this section, is treated in the

1986 Internal Revenue Code at 26 U.S.C. § 3101 et seq.

**Mayor authorized to issue rules.** — See note to § 36-301.

**Method of calculating compensation rate for permanent partial disability not unreasonable.** — Department of Employment Services' requirement that the compensation rate for permanent partial disability be based on the difference between petitioner's pre-injury and post-injury wages is neither unreasonable nor plainly erroneous. *Mason v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 644 (1989).

**Purpose.** — The purpose of paragraph (6) — to encourage employers to hire and retain handicapped workers — is served by limiting employer's liability for disabilities which result from the combination of a pre-existing impair-

ment and a subsequent, work-related accident. *John Driggs Corp. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 632 A.2d 740 (1993).

**Suitable employment.** — Relevant labor market for determining availability of suitable employment is District of Columbia labor market rather than such other place a claimant may reside. *Joyner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 502 A.2d 1027 (1986).

A benefit recipient's failure to respond to repeated notices from counsel of the availability of suitable employment in the Washington, D.C. area is a sufficient basis for disqualifying her from further workers' compensation benefits. *Joyner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 502 A.2d 1027 (1986).

**Right to medical benefits separate from right to income benefits.** — The fact that an employee is no longer eligible to receive disability benefits under this section does not necessarily preclude her from receiving reimbursement of medical expenses under § 36-307; the right to medical benefits is separate and distinct from the right to income benefits. *Santos v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 536 A.2d 1085 (1988).

**Liability for medical services and supplies.** — There is no indication in the language of the Workers' Compensation Act nor its legislative history that the D.C. Council intended to limit the employer's liability for medical services and supplies to the period of time during which the injured employee receives disability income compensation. *Santos v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 536 A.2d 1085 (1988).

**Site of injury and disability do not have to be the same.** — There is nothing in the legislative history that reveals an intent to restrict recovery of a schedule award to instances where the site of the injury and disability coincide. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 470 (1996).

**Previous physical impairment.** — Substantial evidence did not exist to support employer's contention that methadone maintenance increased the risk that the employee would suffer a greater disability if injured or that employer would reasonably fear such a risk. *Red Star Express v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 606 A.2d 161 (1992).

**Emotional distress attributable to sexual harassment not compensable.** — When emotional distress allegedly attributable to sexual harassment (in contrast with some other cause) results in disabling injuries in fact, the language of the Workers' Compensation Act demonstrates that such results are not statutory "injuries," and thus are not compensable disabilities. *Estate of Underwood v. National*

*Credit Union Admin.*, App. D.C., 665 A.2d 621 (1995).

**Total disability.** — A claimant suffers from total disability if his injury prevents him from engaging in the only type of gainful employment for which he is qualified; it does not mean total helplessness, and the claimant need not show that he is no longer able to do any work at all. *Washington Post v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 675 A.2d 37 (1996).

**Measuring degree of disability.** — Degree of disability cannot be measured by physical condition alone, as there must also be taken into consideration the injured person's age, industrial history, and the availability of work which the employee can do; even a relatively minor injury must lead to a finding of total disability if it prevents the employee from engaging in the only type of gainful employment for which the person is qualified. *Washington Post v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 675 A.2d 37 (1996).

**Substantially greater disability.** — The term "substantially greater disability" does not require a numerical analysis comparing the percentage of the permanent disability attributable to the work-related accident to the percentage of the total disability. Conclusion that a five percent increase in disability was insufficient to entitle the employer to special fund relief was erroneous. *John Driggs Corp. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 632 A.2d 740 (1993).

**Entitlement to temporary total disability benefits.** — Once an employee reaches maximum medical improvement and receives a schedule award for permanent partial disability under paragraph (3) of this section, the employee is not entitled to temporary total disability benefits under paragraph (2) of this section for future wage loss arising out of the same injury. *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988).

Employer's failure to offer injured employee a "light duty" position did not conclusively establish that the employee was entitled to temporary total disability benefits. *Washington Post v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 675 A.2d 37 (1996).

**Recovery of actual lost wages.** — A worker who suffers a "schedule award" disability partial in character but permanent in quality may not opt to recover the worker's actual lost wages, under subsection (3)(V), in lieu of the fixed amount of compensation provided in the act for such disability, under subsections (3)(A)-(U). *Lenaerts v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 545 A.2d 1234 (1988).

When a claimant has suffered a permanent partial disability that is not listed under the schedule provisions set out under subdivisions



(3)(A) through (U), a catch-all provision, subdivision (3)(V), entitles a claimant to a wage loss award. In order to qualify for such an award, the employee must actually suffer a reduction in average weekly wages as a result of the disability. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 470 (1996).

**Wage stacking.** — Since the Department of Employment Services (DOES) had not explained the theory underlying its rejection of wage stacking in partial disability cases, the case was remanded to DOES for a clear explanation of its reasons for not using wage stacking to ascertain petitioner's average weekly wage, as of the date of injury, as the basis for calculating his permanent partial disability benefits. *DeShazo v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 1152 (1994).

**Wage loss.** — Paragraph (3) entitles a claimant to such benefits by reference to the type of injury suffered, e.g., arm, foot, eye, for specified numbers of weeks, without regard to actual wage loss. *DeShazo v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 1152 (1994).

Unlike this section's wage loss provisions, a claimant qualifies for a schedule award regardless of whether the claimant actually suffers a wage loss as a consequence of the disability. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 470 (1996).

**Resignation for economic reasons.** — There is no right to compensation benefits when an employee resigns, not for reasons related to the injury or disability, but for economic reasons to take a better paying job.

*Powers v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1068 (1989).

**Remand upheld.** — Remand was appropriate so that the agency could explicitly consider the "manifest" condition issue and delineate precise standards for the determination of whether an employer has met its burden in this regard. *John Driggs Corp. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 632 A.2d 740 (1993).

**Evidence sufficient to support permanent partial disability.** — Evidence held sufficient to support a permanent partial disability ruling as to the legs, based upon claimant's testimony and the reports of his treating and examining physicians. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 683 A.2d 470 (1996).

**Cited in** *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986); *MCM Parking Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 510 A.2d 1041 (1986); *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989); *Dyson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1065 (1989); *Lyles v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 572 A.2d 81 (1990); *Dominique v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 574 A.2d 862 (1990); *Cunningham v. George Hyman Constr. Co.*, App. D.C., 603 A.2d 446 (1992); *Allied Sec., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 621 A.2d 824 (1993); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995); *Daniel v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 673 A.2d 205 (1996).

## § 36-309. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(1) Reasonable funeral expenses not exceeding \$5,000.

(2) If there be a widow or widower and no child of the deceased, to such widow or widower 50% of the average wages of the deceased, during widowhood, or widowerhood, with 2 years' compensation in 1 sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16⅔% of such wages for each such child; in case of the death or remarriage of such widow or widower, if there be 1 surviving child of the deceased employee, such child shall have his compensation increased to 50% of such wages, and if there be more than 1 surviving child of the deceased employee to such children, in equal parts, 50% of such wages increased by 16⅔% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66⅔% of such wages. The Mayor may, in his discretion, require the appointment of a guardian for the purpose of



receiving the compensation of a minor child. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary.

(3) If there be 1 surviving child of the deceased, but no widow or widower then for the support of such child 50% of the wages of the deceased; and if there be more than 1 surviving child of the deceased, but no widow or widower then for the support of such children, in equal parts 50% of such wages increased by 16⅔% of such wages for each child in excess of 1; provided, that the total amount payable shall in no case exceed 66⅔% of such wages.

(4) If there be no widow or widower or child or if the amount payable to a widow or widower and to children shall be less in the aggregate than 66⅔% of the average wages of the deceased, then for the support of grandchildren or brothers and sisters if dependent upon the deceased at the time of the injury, 20% of such wages for the support of each such person and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury 25% of such wages during such dependency. But in no case shall the aggregate amount payable under this paragraph exceed the difference between 66⅔% of such wages and the amount payable as herein before provided to widow or widower and for the support of surviving child or children.

(5) Weekly death benefits paid under this section shall not exceed the average weekly wages of insured employees in the District of Columbia, or \$396.78, whichever is greater.

(6) All questions of dependency shall be determined as of the time of the injury or knowledge by the employee of an occupational disease. (July 1, 1980, D.C. Law 3-77, § 10, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(e), 37 DCR 6890.)

**Section references.** — This section is referred to in §§ 36-308, 36-324, and 36-335.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Legislative history of Law 8-198.** — See note to § 36-342.1.

**Mayor authorized to issue rules.** — See note to § 36-301.

**Cited in** *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986); *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. de-

nied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989); *Dyson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1065 (1989); *Lyles v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 572 A.2d 81 (1990); *Shea v. Director, Office of Workers' Comp. Programs*, 929 F.2d 736 (D.C. Cir. 1991); *Allied Sec., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 621 A.2d 824 (1993); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

## § 36-310. Occupational disease.

In case of pneumoconiosis, such as silicosis and asbestosis, radiation diseases, and any other generally recognized occupational disease, liability for compensation rests with the employer of the last known exposure. (July 1, 1980, D.C. Law 3-77, § 11, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Cited in** *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986); *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. de-

nied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989); *Railco Multi-Construction Co. v. Gardner*, 902 F.2d 71 (D.C. Cir. 1990).

## § 36-311. Determination of average weekly wage.

(a) Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(1) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(2) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by 12 and divided by 52;

(3) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by 52;

(4) If at the time of the injury the wages are fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by 13 the total wages the employee earned in the employ of the employer in the 13 consecutive calendar weeks immediately preceding the injury. If the employee has been in the employ of the employer less than 13 weeks, then his "total wages" referred to in the preceding sentence shall be the amount he would have earned had he been so employed by the employer the full 13 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation; or

(5) If it be established that the employee, when injured, was a minor or a student as defined in § 36-301(18) and that under normal conditions his wages should be expected to increase during the period of disability, whether such disability be temporary, partial, or permanent in character, the fact shall be considered in arriving at his average weekly wage.

(b) The terms "average weekly wage" and "total wages" as used in this section shall include reasonable value for board and lodging received from the employer plus gratuities declared for tax purposes by the employee. (July 1, 1980, D.C. Law 3-77, § 12, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Res judicata.** — Worker was barred by res judicata from relitigating wage determination issue, even though it was not a contested issue in the original action, as the wage determination was a factual question essential to computing benefits under the Act. *Oubre v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 630 A.2d 699 (1993).

**Week of injury not included.** — Language "full 13 calendar weeks immediately preceding the injury" suggests that week of injury is not included in the calculation of the claimant's work history when the injury occurs sometime during the week. *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 103 (1985).

**Computation period.** — The language of the computation provision is mandatory. *Oubre v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 630 A.2d 699 (1993).

**Reference to claimant's actual earnings leads to fair computation** even though based on a period shorter than 13 weeks. *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 103 (1985).

**"Wage stacking" permitted.** — This chapter permits the Department of Employment Services to take into account, in computing benefits awarded under the Workers' Compensation Act, not only income earned from the employer whose work occasioned the injury, but also income from another job the injured worker concurrently held. *MCM Parking Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 510 A.2d 1041 (1986).

**Wage stacking rejected.** — Since the Department of Employment Services (DOES) had not explained the theory underlying its rejection of wage stacking when partial disability was involved, the case was remanded to DOES for a clear explanation of its reasons for not

using wage stacking to ascertain petitioner's average weekly wage, as of the date of injury, as the basis for calculating his permanent partial disability benefits. *DeShazo v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 1152 (1994).

**Effect of promotion.** — Where an injured worker paid on an hourly basis receives a job promotion during the 13-week period over which the worker's "average weekly wage" is calculated, an adjustment is not to be made to the rule otherwise applicable under subsection (a)(4); the employee's average weekly wage will be based on the average of the 13 weeks preceding her injury and not on her new income following her promotion. *Lenaerts v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 545 A.2d 1234 (1988).

**Amended tax returns.** — Income not originally reported in a claimant's income tax return when computing his or her benefits but shown on amended returns can be used in calculating benefits. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 515 A.2d 740 (1986).

**Cited in** *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986); *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989); *Mason v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 562 A.2d 644 (1989); *Cunningham v. George Hyman Constr. Co.*, App. D.C., 603 A.2d 446 (1992).

## § 36-312. Guardian for minor or incompetent.

The Mayor may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter. (July 1, 1980, D.C. Law 3-77, § 13, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

## § 36-313. Notice of injury or death.

(a) Notice of any injury or death in respect of which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death, or 30 days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given to the Mayor and to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or, in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the Mayor by delivering it to him or sending it by mail to him, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or, if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.



(d) Failure to give such notice shall not bar any claim under this chapter:

(1) If the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and its relationship to the employment and the Mayor determines that the employer or carrier has not been prejudiced by failure to give such notice; or

(2) If the Mayor excuses such failure on the ground that for some satisfactory reason such notice could not be given; or unless objection to such failure is raised before the Mayor at the 1st hearing of a claim for compensation in respect of such injury or death. (July 1, 1980, D.C. Law 3-77, § 14, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-338.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Purpose of notice requirements.** — The important twofold purpose of notice requirements is to enable the employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury, and to facilitate the earliest possible investigation of the facts surrounding the injury. *Teal v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 580 A.2d 647 (1990).

**Untimely notice not excused.** — There was not a sufficient evidentiary basis for hearing examiner's conclusion that claimant was rendered legally incompetent by reason of his deteriorated mental condition so as to excuse his untimely notice. *Teal v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 580 A.2d 647 (1990).

**Notice of injury.** — Notice to former insurance carrier was not notice to the present carrier so as to comply with the provisions of subsection (d)(1) of this section. *Madison Hotel v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 512 A.2d 303 (1986).

**Incident witnessed by employer's representative.** — An employer has actual knowledge of an injury and its relationship to employment when there is an incident at work witnessed by an employer's representative which ultimately results in an injury even though both the injured employee and the employee's representative underestimated the seriousness of the incident at the time of the incident. *Howrey & Simon v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 254 (1987).

**Informal notice given by employee.** — The recognition of an employee's informal reporting of her own work-related injury as an attempt to claim compensation, although a fairly expansive interpretation of the Act, advances the purpose of the Act by preventing employers from taking action in retaliation for an employee's use of the workers' compensation system. *Abramson Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 596 A.2d 549 (1991).

**Cited in** *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

## § 36-314. Time for filing claims.

(a) Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefor is filed within 1 year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within 1 year after the date of the last payment. Such claim shall be filed with the Mayor. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment. Once a claim has been filed with the Mayor, no further written claims are necessary.

(b) Notwithstanding the provisions of subsection (a) of this section, failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the 1st hearing of such

claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subsection (a) of this section shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) Where recovery is denied to any person, in a suit brought at law to recover damages in respect of injury or death, on the ground that such a person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation of time prescribed in subsection (a) of this section shall begin to run only from the date of termination of such suit. (July 1, 1980, D.C. Law 3-77, § 15, 27 DCR 2503.)

**Section references.** — This section is referred to in §§ 36-320 and 36-332.

**Legislative history of Law 3-77.** — See note to § 36-301.

**“Claim” defined.** — Under this chapter, a “claim” means a simple request for compensation which triggers the process of claim adjudication. *Ferreira v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), *aff’d*, App. D.C., 667 A.2d 310 (1995).

Any questions that arise throughout the course of a case, after a claim has been filed under subsection (a), do not constitute new and separate “claims for compensation,” but are simply different issues that must be addressed with respect to an employee’s claim. *C & P Tel. Co. v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994).

**Benefits decision which conflicts with enabling statute and regulations.** — Where the Department of Employment Services’ decision on awarding benefits appears to conflict with its enabling statute and with the Department’s own regulations, a remand of the case is required to allow the Department to provide further explication and rationale for its decision. *Allied Sec., Inc. v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 621 A.2d 824 (1993).

**Limitations period.** — Employer’s receipt of disability rating could not trigger the 30 day period under subsection (a). *C & P Tel. Co. v.*

*District of Columbia Dep’t of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994).

**Subjective and objective standards for awareness.** — This section incorporates not only a subjective but also and objective (“should have been aware”) standard. *KOH Sys. v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 683 A.2d 446 (1996).

**Awareness of work-related injury.** — Subsection (a) requires the employee to file a workers’ compensation claim within one year of the injury. The court’s first inquiry, therefore, is whether substantial evidence supported the hearing examiner’s decision that plaintiff had been aware, more than a year before filing his claim, that his injuries were work-related. *KOH Sys. v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 683 A.2d 446 (1996).

Plaintiff’s mere unconfirmed suspicion, standing alone, was an insufficient basis for a finding that he had been “aware” of the relationship between his injury and employment. *KOH Sys. v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 683 A.2d 446 (1996).

**Cited in** *Thomas v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 547 A.2d 1034 (1988); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989); *Dyson v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 566 A.2d 1065 (1989); *Renard v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 673 A.2d 1274 (1996).

## § 36-315. Payment of compensation.

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The 1st installment of compensation shall become due on the 14th day after the employer has knowledge of the job-related injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, biweekly, except where the Mayor determines that payment in installments should be made monthly or at some other period.

(c) Upon making the 1st payment and upon suspension of payment for any cause, the employer shall immediately notify the Mayor in accordance with a form prescribed by the Mayor that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the Mayor, on or before the 14th day after he has knowledge of the alleged injury or death and its relationship to the employment, a notice in accordance with a form prescribed by the Mayor stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within 14 days after it becomes due, as provided in subsection (b) of this section, there shall be added to such unpaid installment an amount equal to 10% thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subsection (d) of this section, or unless such nonpayment is excused by the Mayor after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in § 36-322 and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(g) Within 16 days after final payment of compensation has been made, the employer shall send to the Mayor a notice, in accordance with a form prescribed by the Mayor, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so notify the Mayor within such time the Mayor shall assess against such employer a civil penalty in the amount of \$100.

(h) The Mayor: (1) may upon his own initiative at any time in a case in which payments are being made without an award; and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer, that the right to compensation is controverted, or where payments of compensation have been stopped or



suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the Mayor deems it advisable he may require any employer to make a deposit with the District of Columbia Treasurer to secure the prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the Mayor.

(j) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due. All payments prior to an award, to an employee who is injured in the course and scope of his employment, shall be considered advance payments of compensation.

(k) An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the Mayor, whenever required. (July 1, 1980, D.C. Law 3-77, § 16, 27 DCR 2503.)

**Section references.** — This section is referred to in §§ 36-307 and 36-328.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Right to hearing and award.** — An injured worker is not entitled to a hearing and compensation award under the District of Columbia Workers' Compensation Act where no material issues are in dispute and the self-insured employer is voluntarily paying benefits under the Act. *Thomas v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 547 A.2d 1034 (1988).

**Sick leave benefits.** — The requirement that a worker use his sick leave benefits to

maintain his wages during the period he is out as a result of a job-related injury may, in practical effect, mean that he loses that protection if, later on, he loses time from work for a non-job-related illness because his otherwise available sick benefits will be exhausted. *Gay v. Department of Emp. Services*, App. D.C., 644 A.2d 1326 (1994).

**Cited in** *Dyson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1065 (1989); *Cunningham v. George Hyman Constr. Co.*, App. D.C., 603 A.2d 446 (1992); *Allied Sec., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 621 A.2d 824 (1993).

## § 36-316. Invalid agreements.

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose or any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000.

(b) No agreement by an employee to waive his right to compensation under this chapter shall be valid. (July 1, 1980, D.C. Law 3-77, § 17, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-308.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Reduction in compensation.** — Parties

could not voluntarily enter agreement reducing the amount of petitioner's benefits. *Oubre v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 630 A.2d 699 (1993).

### **§ 36-317. Assignment of compensation; exemption from claims of creditors.**

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims or creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. (July 1, 1980, D.C. Law 3-77, § 18, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-308.

**Legislative history of Law 3-77.** — See note to § 36-301.

### **§ 36-318. Compensation as lien against assets.**

Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both. (July 1, 1980, D.C. Law 3-77, § 19, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-319.

**Legislative history of Law 3-77.** — See note to § 36-301.

### **§ 36-319. Collection of defaulted payments.**

(a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 2 years after such default, make application to the Mayor for a supplementary order declaring the amount of the default. After investigation, notice and hearing, as provided in § 36-320, the Mayor shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award the Mayor may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the Clerk of the Superior Court of the District of Columbia. Such supplementary order of the Mayor shall be final, and the Court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the Court shall otherwise direct. The Court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the Court.

(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Mayor may, in his discretion, and to the extent he shall determine advisable after consideration or current commitments payable from the special fund established in § 36-

340, make payment from such fund upon any award made under this chapter, and, in addition, provide any necessary medical, surgical, and other treatment required by § 36-307 in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Mayor under this subsection; and for the purposes of enforcing this liability, the Mayor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits, including the right of lien and priority provided for by § 36-318 as against the employer and may by a proceeding in the name of the Mayor under § 36-320 or under § 36-322 (c), or both, seek to recover the amount of the default or so much thereof as in the judgment of the Mayor is possible, or the Mayor may settle and compromise any such claim. (July 1, 1980, D.C. Law 3-77, § 20, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-340.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Benefit of payments.** — Although payments will benefit the employer, that does not suggest that the payment will not also still benefit the employees. The fact that the employer is ultimately liable for the workers' compensation liability does not change the fact that payment of the premium will benefit the employees by ensuring their workers' compensation insurance coverage is still in force and is a

benefit within 11 U.S.C. § 507(a)(4). In re Gerald T. Fenton, Inc., 178 Bankr. 582 (Bankr. D.D.C. 1995).

**Duplicative payments.** — Under the District statutory scheme, the government does not provide anything close to duplicative coverage, and, hence, it is unnecessary to reach the question of whether purely duplicative coverage would bar workers' compensation premiums from priority under subsection (b) and 11 U.S.C. § 507(a)(4). In re Gerald T. Fenton, Inc., 178 Bankr. 582 (Bankr. D.D.C. 1995).

## § 36-320. Procedure in respect of claims.

(a) Subject to the provisions of § 36-314, a claim for compensation may be filed with the Mayor in accordance with regulations prescribed by the Mayor at any time after the first 3 days of disability following any injury, or at any time after death, and the Mayor shall have full power and authority to hear and determine all questions in respect of any claim.

(b) Within 10 days after such claim is filed, the Mayor shall notify the employer and any other person (other than the claimant), whom the Mayor considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered or certified mail.

(c) The Mayor shall make or cause to be made such investigations as he considers necessary in respect of the claim, which may include processing the claim through a central system in order to give the Mayor an advisory opinion on the rate and degree of disability. Upon application of any interested party the Mayor shall order a hearing within a reasonable time not to exceed 120 days, unless he grants a special extension of time for the development of facts. If a hearing on such claim is ordered the Mayor shall give the claimant and other interested parties at least 10 days notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail or certified mail, and



no additional information may be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor. Within 20 days after such hearing is held, the Mayor shall by order reject the claim or make an award in respect of the claim based upon substantial evidence before him. If no hearing is ordered within 20 days after notice is given as provided in subsection (b) of this section, the Mayor shall, by order, reject the claim or make an award in respect of the claim based upon substantial evidence before him.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

(e) The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed with the Mayor, and a copy thereof shall be sent by registered or certified mail to the claimant and to the employer at the last known address of each.

(f) An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the District of Columbia or by a duly qualified physician or panel of physicians designated or approved by the Mayor as the Mayor may require. The place or places shall be reasonably convenient for the employee. Proceedings shall be suspended and no compensation be payable for any period during which the employee may refuse to submit to examination.

(g) All medical reports submitted by the claimant or any other interested party shall become part of the record, except that the Mayor shall have the discretion to require the testimony at the hearing of any reporting physician. Copies of all medical reports submitted shall be supplied to any party upon request. (July 1, 1980, D.C. Law 3-77, § 21, 27 DCR 2503.)

**Section references.** — This section is referred to in §§ 36-319, 36-322, and 36-324.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

The Mayor's functions under the Workers' Compensation Act have been delegated to the Director of the Department of Employment Services (DOES), who has in turn directed that compensation orders be filed with the DOES Office of General Counsel — a determination which is neither plainly erroneous nor inconsistent with the intent of the Workers' Compensation Act. *Greenwood's Transf. & Storage Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 553 A.2d 1246 (1989).

**Alternative theories of employment causation.** — A "claim" is not a specific theory of

employment causation; claimants may argue alternative theories of employment causation in making "claims" for compensation. *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), *aff'd*, App. D.C., 667 A.2d 310 (1995).

**Time limits directory.** — Time limit in subsection (c) is directory rather than mandatory. *Washington Post v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 675 A.2d 37 (1996).

**Right to hearing and award.** — An injured worker is not entitled to a hearing and compensation award under the District of Columbia Workers' Compensation Act where no material issues are in dispute and the self-insured employer is voluntarily paying benefits under the Act. *Thomas v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 547 A.2d 1034 (1988).

**Sufficiency of notice.** — The Department of Employment Services' mailing of a compensation order to an employer's counsel of record, who represented the employer in proceedings before the department, is the equivalent of mailing notice to the employer. *Greenwood's Transf. & Storage Co. v. District of Columbia*

Dep't of Emp. Servs., App. D.C., 553 A.2d 1246 (1989).

Where petitioners in fact had almost 2 months' actual notice of the hearing and fully participated in it, they were not prejudiced by the admittedly defective notice sent by the Department of Employment Services. *Regional Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 600 A.2d 1077 (1991), cert. denied, 505 U.S. 1206, 112 S. Ct. 2997, 120 L. Ed. 2d 873 (1992).

**Hearing regarding change of conditions.** — By the terms of § 36-324, a claimant's right to an evidentiary hearing under this section is triggered only where there is "reason to believe that a change of conditions has occurred." Procedurally, a preliminary hearing to determine whether there is sufficient evidence of a nature which could give one reason to believe that a change of conditions had occurred is a rational, productive means of reaching the initial determination required. *Snipes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 542 A.2d 832 (1988).

**Additional evidence.** — In worker's compensation claim, where the record remained open for submission of additional evidence, consideration of the evidence by the hearing examiner as part of the total record was proper. *Porter v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 518 A.2d 1020 (1986).

Once a worker's compensation hearing is concluded, no additional information may be submitted "except under unusual circumstances," pursuant to subsection (c), thus the record would not be held open for a statement by the physician as to his opinion regarding the treatment selected when he had previously ex-

plained why he ordered that treatment. *King v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 1067 (1989).

Director was correct in concluding that, despite pertinent regulation (7 DCMR § 223.4 (1986)), subsection (c) still requires a showing of unusual circumstances before a hearing examiner may receive post-hearing evidence. *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 17 (1990).

**Reopening a hearing.** — To reopen a hearing merely because one party failed to thoroughly investigate the circumstances, facts, and other pertinent information related thereto is an insufficient basis for granting a request under the rubric of "unusual circumstances." *Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 451 (1996).

Petitioners failed to demonstrate any unusual circumstances that would have justified reopening the record in a workers' compensation case, where any relevant and material evidence in their possession could have reasonably been presented at the hearing. *Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 451 (1996).

**Cited** in *Hughes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 567 (1985); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 553 A.2d 645 (1989); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989); *Dyson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 566 A.2d 1065 (1989); *Allied Sec., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 621 A.2d 824 (1993).

## § 36-321. Presumptions.

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:

- (1) That the claim comes within the provisions of this chapter;
- (2) That sufficient notice of such claim has been given;
- (3) That the injury was not occasioned solely by the intoxication of the injured employee; and
- (4) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another. (July 1, 1980, D.C. Law 3-77, § 22, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Purpose.** — This section was designed to effectuate the humanitarian purposes of the Workers' Compensation Act and reflects a strong legislative policy favoring awards in arguable cases. *Parodi v. District of Columbia*

*Dep't of Emp. Servs.*, App. D.C., 560 A.2d 524 (1989).

**In general.** — The statutory presumption operates to establish a causal connection between the disability and the work-related event. *Baker v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 611 A.2d 548 (1992).

**Presumption of compensability.** — In the District of Columbia, injuries suffered by a worker on the job are presumed by statute to be compensable; this presumption operates to establish a causal connection between the disability and the work-related event. *Sturgis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 629 A.2d 547 (1993).

To defeat a claim for compensation, an employer must rebut the presumption of compensability by offering evidence that the claim is not one "arising out of and in the course of employment." *Sturgis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 629 A.2d 547 (1993).

**Alternative theories of employment causation.** — If one theory of employment causation has the potential to result in or contribute to the disability suffered, the presumptions are triggered. *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), *aff'd*, App. D.C., 667 A.2d 310 (1995).

**Claimant's burden.** — To benefit from the presumptions, a claimant must make some "initial demonstration" of the employment connection of the disability which consists of some evidence of the existence of a death or disability and a work-related event, activity, or requirement which has the potential of resulting in or contributing to the death or disability. *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), *aff'd*, App. D.C., 667 A.2d 310 (1995); *Parodi v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 524 (1989).

**Employer's burden.** — A valid presumption operates to establish a causal connection between the disability and the work-related event, activity, or requirements and shifts the burden to the employer to show substantial evidence that death or disability did not arise out of and in the course of employment. *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), *aff'd*, App. D.C., 667 A.2d 310 (1995).

Once the presumption is triggered, the burden of production shifts to the employer to set forth "substantial evidence" showing that the death or disability is not work-related. Absent employer evidence specific and comprehensive enough to sever the potential connection be-

tween a particular injury and job-related event, the compensation claim will be deemed to fall within the purview of the Workers' Compensation Act. *Parodi v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 524 (1989); *Whitaker v. District of Columbia, Dep't of Emp. Servs.*, App. D.C., 668 A.2d 844 (1995).

Once triggered, the presumption of compensability in a workers' compensation case requires the employer to produce substantial evidence showing that the death or disability is not work-related, and in any contested case the Hearing Examiner must include finding of fact and conclusions of law in his decision. *Spartin v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 564 (1990); *Baker v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 611 A.2d 548 (1992).

**Recovery against third parties.** — The humanitarian purpose of the workers' compensation statute, the presumption of compensability which enables a claimant more easily to establish his or her entitlement to benefits, is not intended to facilitate recovery against third parties by either the employer or the employee. *4934, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 605 A.2d 50 (1992).

**Paragraph (1) requires "evidence," not "substantial evidence."** — There is one significant difference between paragraph (1) of this section and 33 U.S.C § 920(a) (the Longshoreman's and Harbor Workers' Compensation Act, which was formerly the statutory basis for workers' compensation in the District of Columbia), that is, the D.C. Council deleted "substantial evidence" and inserted only "evidence." *Dunston v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 109 (1986).

**Scope of presumption under paragraph (1).** — A claimant is entitled, under paragraph (1) of this section, to a presumption that his claim is compensable, i.e., that his injury "arises out of" his employment; he is not entitled to a presumption that his injury has left him totally and permanently disabled. *Dunston v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 109 (1986).

**Cited in** *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995); *Ferreira v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 667 A.2d 310 (1995).

## § 36-322. Review of compensation orders.

(a) A compensation order shall become effective when filed with the Mayor as provided in § 36-320, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subsection (b) of this section, shall become final at the expiration of the 30th day thereafter.

(b)(1) Where a compensation order is not in accordance with this chapter, such order may be suspended or set aside, in whole or in part, upon application



of any party for review of the order by the Mayor, or, if the Mayor declines to review the order or does not provide for such review as authorized in paragraph (2) of this subsection or if a final decision pursuant to such review is not rendered within the time period established in paragraph (2) of this subsection, then by the District of Columbia Court of Appeals in accordance with paragraph (3) of this subsection.

(2) The Mayor is authorized to establish an administrative procedure for review of compensation orders raising a substantial question of law or fact. Application for such review shall be made by any party within 30 days from the date a compensation order is filed as provided in § 36-320. Final decisions issued pursuant to such review shall be rendered within 45 days from the date of the application and shall be based upon the record of the hearing. If a final decision is not rendered within such 45-day period the compensation order shall be considered a final decision for purposes of appeal pursuant to paragraph (3) of this subsection. The findings of fact in the order under review shall be conclusive if supported by substantial evidence in the record, considered as a whole. A case may be remanded for further appropriate action. If any party shall apply to the Mayor for leave to adduce additional evidence and shall show to the satisfaction of the Mayor that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the initial hearing before the Mayor, the Mayor may order such additional evidence to be taken and to be made a part of the record. The Mayor may modify his findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole. The Mayor may modify or set aside his original order by reason of such modified or new findings of fact. The application by a party for leave to adduce additional evidence shall stop the running of the 45-day period in which a decision by the Mayor must be rendered. If the Mayor remands the case, any party may apply for review within 30 days from the date a new compensation order is filed. A final decision must be rendered within 45 days from the date of the application for review of such new compensation order, and if not rendered within such period, then upon expiration of the 45 days such new compensation order shall be considered a final decision for purposes of paragraph (3) of this subsection. The payment of any amounts required by a compensation order shall not be stayed pending final decision on review unless so ordered on the grounds that irreparable injury would otherwise ensue to the employer.

(3) Pursuant to the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.), any party in interest who is adversely affected or aggrieved by a final decision rendered after review of a compensation order as provided in paragraph (2) of this subsection, or, if the Mayor has declined to review the order or does not establish a procedure for such review, any party in interest who is adversely affected or aggrieved by a compensation order which has been filed as provided in § 36-320, may petition for review of such decision or order by the District of Columbia Court of Appeals. If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the

hearing before the Mayor, the Court may order such additional evidence to be taken before the Mayor, and to be made part of the record. The Court may remand the case for appropriate action.

(c) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award, or the Mayor, may apply for the enforcement of the order to the Superior Court of the District of Columbia for enforcement of such order and upon showing that such employer or his officers or agents have failed to comply therewith, the Court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and § 36-320. (July 1, 1980, D.C. Law 3-77, § 23, 27 DCR 2503.)

**Section references.** — This section is referred to in §§ 36-315, 36-319, and 36-324.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**Motion to adduce.** — Subsection (b)(2) of this section itself contains no specific time limit for the filing of a motion to adduce; however, it does specify that the director shall decide the appeal of the compensation order within forty-five days of the filing of the application of review and that the filing of a motion to adduce tolls the running of that forty-five-day period. In short, subsection (b)(2) of this section requires that the motion to adduce be filed before the Director rules on the merits of the claim. *Wilson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 640 A.2d 1044 (1994).

**Failure to make a special finding.** — The hearing examiner's failure to make a special finding concerning petitioner's credibility did not negate the substantial evidence requirement and did not constitute error. *Porter v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 518 A.2d 1020 (1986).

**Failure to consider certain disability factors deemed error.** — See *Davis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 542 A.2d 815 (1988).

**Failure to consider new medical evidence deemed error.** — The Director of the Department of Employment Services was required, under subdivision (b)(2), to determine

whether new medical evidence should have been considered, or at least to take some action in response to petitioner's request to have that evidence considered; by ignoring the request to consider new medical evidence, the Director committed error. *Bennett v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 629 A.2d 28 (1993).

**Evidence held sufficient to support determination of ineligibility for further workers' compensation benefits.** — See *Joyner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 502 A.2d 1027 (1986).

**Application of standard of review.** — Where an administrative regulation provides that the Director of the Department of Employment Services shall affirm a compensation order if it is supported by substantial evidence in the record, this standard of review applies to all compensation orders, not just those issued without a hearing. *Dell v. Department of Emp. Servs.*, App. D.C., 499 A.2d 102 (1985) (De novo review unauthorized).

**Scope of review.** — In considering an appeal from the decision of a hearing examiner in a workers' compensation case, the director may not consider the evidence de novo and make her own findings of fact, but instead must conduct a limited review to determine whether the examiner's findings are supported by substantial evidence. The Court of Appeals likewise is limited to determining whether the director's order is in accordance with law and supported by substantial evidence in the record. *King v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 1067 (1989).

**Credibility of expert testimony.** — Where the Hearing Examiner relied expressly on the opinion of one expert's testimony whose fundamental factual bases were questioned, the Hearing Examiner should have offered some



explanation for why the expert's conclusions were nonetheless credible, a summary conclusion that the expert opinion is well-reasoned is insufficient to allow a reviewing court to conclude that the decision followed rationally from the findings of fact. *Spartin v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 564 (1990).

**Additional evidence.** — Where, before the director rendered a decision, the party requested that additional medical evidence in support of his claim be added to the record, there was an obligation under subsection (b)(2) of this section to consider whether this proffered evidence was material and whether there were reasonable grounds for the failure to adduce such evidence in the initial hearing. *King v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 1067 (1989).

If a party seeks modification based on a proffer of additional evidence after one of the parties has filed a petition in this court for review of a compensation order deemed final based on the Director's failure to decide within the required 45 days, this court will decide in the first instance whether to remand for the taking of additional evidence. *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

**Modification of order.** — When the compensation order is still on appeal to the Director, § 36-324 generally does not apply; a party may not seek the Hearing and Adjudication Section modification of that order, based on "additional evidence," unless and until the Director, upon the party's application, remands the case for that purpose under this section. *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

Until there has been a final decision by the Director on an appealed compensation order, any request for modification of that order shall be addressed, pending appeal, to the Director, who is obliged to exercise discretion whether to remand the case for reconsideration, based on additional evidence, by a hearing examiner. *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

When a Hearing and Adjudication Section (H

& AS) compensation order is still on appeal to the Director without a remand for additional evidence pursuant to § 36-322, H & AS will not have jurisdiction over a § 36-324 request for modification of that order, unless the issue on which the party seeks modification is entirely severable from the issues pending before the Director. Only in the case of clear severability, therefore, will H & AS have jurisdiction to rule on a modification request under § 36-324 concerning a case pending administrative appeal which the Director has not remanded pursuant to § 36-322. *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

**Cited in** *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983); *George Hyman Constr. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 103 (1985); *Hughes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 567 (1985); *Grayson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 516 A.2d 909 (1986); *Lenaerts v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 545 A.2d 1234 (1988); *Greenwood's Transf. & Storage Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 553 A.2d 1246 (1989); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989); *Capital Hilton Hotel v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 565 A.2d 981 (1989); *Railco Multi-Construction Co. v. Gardner*, 902 F.2d 71 (D.C. Cir. 1990); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 584 A.2d 17 (1990); *Warner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 587 A.2d 1091 (1991); *Stewart v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 606 A.2d 1350 (1992); *Harris v. District of Columbia Office of Worker's Comp.*, App. D.C., 660 A.2d 404 (1995); *Whitaker v. District of Columbia, Dep't of Emp. Servs.*, App. D.C., 668 A.2d 844 (1995); *Washington Post v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 675 A.2d 37 (1996); *Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 681 A.2d 451 (1996).

## § 36-323. Appearance of Corporation Counsel for Mayor.

In any court proceedings instituted under the provisions of this chapter, the Corporation Counsel of the District of Columbia shall appear as attorney or counsel on behalf of the Mayor whether the Mayor is a party to the case or interested, and shall represent the Mayor in any court in which such case may be carried on appeal. (July 1, 1980, D.C. Law 3-77, § 24, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.



## § 36-324. Modification of awards.

(a) At any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim, provided, however, that in the case of a claim filed pursuant to § 36-308(a)(3)(V) the time period shall be at any time prior to 3 years after the date of the last payment of compensation or at any time prior to 3 years after the rejection of a claim, the Mayor may, upon his own initiative or upon application of a party in interest, order a review of a compensation case pursuant to the procedures provided in § 36-320 where there is reason to believe that a change of conditions has occurred which raises issues concerning:

(1) The fact or the degree of disability or the amount of compensation payable pursuant thereto; or

(2) The fact of eligibility or the amount of compensation payable pursuant to § 36-309.

(b) A review ordered pursuant to subsection (a) of this section shall be limited solely to new evidence which directly addresses the alleged change of conditions.

(c) Upon the completion of a review conducted pursuant to subsection (a) of this section, the Mayor shall issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation previously paid, or award compensation. An award increasing or decreasing the compensation rate may be made and shall be effective from the date of the Mayor's order for a review of the compensation case. If, since the date of the Mayor's order for a review of the compensation case, the employer has made any payments of compensation at a rate greater than the rate provided in the new compensation order, the employer shall be entitled to be reimbursed for the difference in accordance with rules promulgated by the Mayor. If, since the date of the Mayor's order for review of the compensation case, the employer has made any payments of compensation at a rate less than the rate provided in the new compensation order, the employee shall be entitled to the difference as additional compensation in accordance with rules promulgated by the Mayor.

(d) A compensation order issued pursuant to subsection (c) of this section shall be reviewable pursuant to § 36-322. (July 1, 1980, D.C. Law 3-77, § 25, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Finality of decisions.** — It is clear from the language and statutory scheme that this section generally presupposes modification of a final decision, either by the Hearing and Adjudication Section (not appealed within 30 days) or by the Director (after appeal). *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

**Orders appealed to Director.** — Until there has been a final decision by the Director on an appealed compensation order, any request for modification of that order shall be addressed, pending appeal, to the Director, who is obliged to exercise discretion whether to

remand the case for reconsideration, based on additional evidence, by a hearing examiner. *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

When the compensation order is still on appeal to the Director, this section generally does not apply; a party may not seek the Hearing and Adjudication Section modification of that order, based on "additional evidence," unless and until the Director, upon the party's application, remands the case for that purpose under § 36-322. *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

When a Hearing and Adjudication Section (H & AS) compensation order is still on appeal to

the Director without a remand for additional evidence pursuant to § 36-322, H & AS will not have jurisdiction over a request for modification of that order, unless the issue on which the party seeks modification is entirely severable from the issues pending before the Director. Only in the case of clear severability, therefore, will H & AS have jurisdiction to rule on a modification request under this section concerning a case pending administrative appeal which the Director has not remanded pursuant to § 36-322. *Georgetown Univ. Hosp. v. Department of Emp. Serv.*, App. D.C., 659 A.2d 832 (1995).

**Hearing concerning change of conditions.** — By the terms of this section, a claimant's right to an evidentiary hearing under § 36-320 is triggered only where there is "reason to believe that a change of conditions has

occurred." Procedurally, a preliminary hearing to determine whether there is sufficient evidence of a nature which could give one reason to believe that a change of conditions had occurred is a rational, productive means of reaching the initial determination required. *Snipes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 542 A.2d 832 (1988).

**Evidence held sufficient to support determination of ineligibility for further workers' compensation benefits.** — See *Joyner v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 502 A.2d 1027 (1986).

**Cited in** *McDaniels v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 512 A.2d 990 (1986); *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988); *Oubre v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 630 A.2d 699 (1993).

## § 36-325. Hearings before Mayor.

(a) In making an investigation or inquiry or conducting a hearing the Mayor shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Prior to the hearing before the Mayor the parties may conduct such discovery, including but not limited to the use of interrogatories and depositions as, in the opinion of the Mayor, will be helpful in determining the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before the Mayor shall be open to the public and shall be stenographically reported. The Mayor shall by regulation provide for the preparation of a record of the hearings and other proceedings before the Mayor. (July 1, 1980, D.C. Law 3-77, § 26, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated

his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

## § 36-326. Attendance of witnesses.

No person shall be required to attend as a witness in any proceeding before the Mayor at more than 25 miles of the place of the hearing, unless his lawful mileage and fee for 1 day's attendance shall be first paid or tendered to him; but the testimony of any witness including that of an interested party may be taken by deposition or interrogatories according to the rules of practice of the Superior Court of the District of Columbia. (July 1, 1980, D.C. Law 3-77, § 27, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**§ 36-327. Witness fees.**

Witnesses summoned in a proceeding before the Mayor or whose depositions are taken shall receive the same fees and mileage as witnesses in the Superior Court of the District of Columbia. (July 1, 1980, D.C. Law 3-77, § 28, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**§ 36-328. Costs in proceedings brought without reasonable grounds; penalty for unreasonable delay in payment of compensation.**

(a) If the trier of fact or court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

(b) If the Mayor or court determines that an employer or carrier has delayed the payment of any installment of compensation to an employee in bad faith, the employer shall pay to the injured employee, for the duration of the delay, the actual weekly wage of the employee for the period that the employee is eligible to receive workers' compensation benefits under this chapter. The penalty shall be in addition to any amount paid pursuant to § 36-315. (July 1, 1980, D.C. Law 3-77, § 29, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(f), 37 DCR 6890.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Mayor authorized to issue rules.** — See note to § 36-301.

**Legislative history of Law 8-198.** — See note to § 36-342.1.

**§ 36-329. Powers of Mayor.**

(a) The Mayor shall have the power to preserve and enforce order during any such proceedings, to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things in conformity with law which may be necessary to enable him to effectively discharge the duties of his office.

(b) If any person in proceedings before the Mayor disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a



witness, or after having taken the oath refuses to be examined according to law, the Mayor shall certify the facts to the Superior Court of the District of Columbia which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the Court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the Court. (July 1, 1980, D.C. Law 3-77, § 30, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated

his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

### § 36-330. Attorney fees.

(a) If the employer or carrier declines to pay any compensation on or before the 30th day after receiving written notice from the Mayor that a claim for compensation has been filed, on the grounds that there is no liability for compensation within the provisions of this chapter, and the person seeking benefits thereafter utilizes the services of an attorney-at-law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the Mayor, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final.

(b) If the employer or carrier pays or tenders payment of compensation without an award pursuant to this chapter, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the Mayor shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within 14 days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation and thereafter utilizes the services of an attorney-at-law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Mayor, as authorized in § 36-307(e), and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Mayor or court in any such case, an award may be made in favor of the claimant and against the employer or

carrier for a reasonable attorney's fee for claimant's counsel in accordance with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

(c) In all cases, fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Mayor or any court for review of any actions, award, order or decision, the Mayor or court may approve an attorney's fee for the work done before him or it, as the case may be, by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award, and the Mayor or court shall fix in the award approving the fee such lien and manner of payment.

(d) In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the Mayor, or the court, as the case may be. The amounts awarded against the employer or carrier as attorney's fees, costs, fees and mileage of witnesses shall not in any respect affect or diminish the compensation payable under this chapter.

(e) Any person who receives any fees, other consideration or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved by the Mayor or court, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, shall upon conviction thereof for each offense be punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(f) At no time shall an attorney's fee be approved in excess of 20% of the actual benefit secured through the efforts of the attorney. This provision applies to all benefits secured through the efforts of an attorney, including settlements provided for under this chapter. (July 1, 1980, D.C. Law 3-77, § 31, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Applicability.** — Subsection (a) applies not only when a claim is filed initially, but also when there is a later claim for permanent partial disability. *C & P Tel. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994).

The plain language of subsection (b) demonstrates that it applies where the employer contests the extent of disability. *C & P Tel. Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994).

Where petitioner paid the full amount claimed within 14 days of the informal conference recommendation, Employment Services erred in concluding both that subsection (b) was inapplicable and that petitioner was liable for any attorney fees. *C & P Tel. Co. v. District*

*of Columbia Dep't of Emp. Servs.*, App. D.C., 638 A.2d 690 (1994).

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**Subsections (a) and (f) consistent.** — Even though "reasonable" attorney's fees are to be paid pursuant to subsection (a), subsection (f) ensures that the Workers' Compensation Act's main purpose of reducing employer and carrier expenses is fulfilled by putting a ceiling on what may be regarded as "reasonable." There is no inconsistency between subsection

(a) and subsection (f). *Baghini v. District of Columbia Dep't Emp. Servs.*, App. D.C., 525 A.2d 1027 (1987).

**Limitation of subsection (f).** — The 20 percent limitation on attorney's fees established by subsection (f) applies across the board to all compensation awards in contested cases, regardless of whether the fees are paid by the claimant, the employer, or the employer's in-

surance carrier. *Baghini v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 525 A.2d 1027 (1987).

**Cited in** *Hughes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 567 (1985); *MCM Parking Co. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 549 A.2d 1107 (1988); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989).

## § 36-331. Employer record of injury or death.

Every employer shall keep a record with respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Mayor may by regulation require, and shall be available for inspection by an authorized representative of the Mayor or of any agency of the government of the District of Columbia at such times and under such conditions as the Mayor may by regulation prescribe. (July 1, 1980, D.C. Law 3-77, § 32, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

## § 36-332. Employer reports.

(a) Within 10 days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Mayor a report setting forth: (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Mayor may require. The employer shall also send a copy of the report together with such other information as may be required by the Mayor to the Department of Employment Services.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Mayor at such times and in such manner as the Mayor may prescribe.

(c) Any report provided for in subsection (a) or (b) of this section shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subsection (a) or (b) of this section, to the Mayor shall be a compliance with this section.

(e) Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed \$1,000 for each such failure or refusal.

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of



subsection (a) of this section, the limitations in § 36-314(a) shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subsection (a) of this section.

(g) On receiving the report provided by subsection (a) of this section, the Mayor shall notify the injured employee of the employee's rights and obligations under this chapter. (July 1, 1980, D.C. Law 3-77, § 33, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See KOH Sys. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 446 (1996).  
note to § 36-301.

**Cited in** Harris v. District of Columbia Dep't of Emp. Serv., App. D.C., 648 A.2d 672 (1994);

### § 36-333. Penalty for misrepresentation.

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed \$1,000 or by imprisonment of not to exceed 1 year, or by both such fine and imprisonment. (July 1, 1980, D.C. Law 3-77, § 34, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See  
note to § 36-301.

### § 36-334. Security for payment of compensation.

(a) Every employer shall secure the payment of compensation under this chapter: (1) by insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any person or fund, while such person or fund is authorized: (A) under the laws of the United States, the District of Columbia, or of any state, to insure workers' compensation; and (B) by the Mayor to insure payment of compensation under this chapter; or (2) by furnishing satisfactory proof to the Mayor of his financial ability to pay such compensation and receiving an authorization from the Mayor to pay such compensation directly. The Mayor may, as a condition to such authorization, require such employer to deposit with the District of Columbia Treasurer either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Mayor, and subject to such conditions as the Mayor may prescribe, which shall include authorization to the Mayor, in case of default, to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this subsection shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this chapter the Mayor may take into consideration the recommendation of any District authority having supervision over carriers. Any carrier so authorized by the Mayor shall maintain a representative in the

District of Columbia who can fulfill all of the obligations of the carrier under this chapter and who shall maintain a file of all active claims being serviced by the carrier in the District of Columbia. The Mayor may suspend or revoke the authorization of any carrier to insure payment of compensation under this chapter for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred. (July 1, 1980, D.C. Law 3-77, § 35, 27 DCR 2503.)

**Section references.** — This section is referred to in §§ 36-301, 36-339, and 36-341.

**Legislative history of Law 3-77.** — See note to § 36-301.

### **§ 36-335. Compensation for injuries where third persons are liable.**

(a) If, on account of a disability or death for which compensation is payable under this chapter, the person entitled to such compensation determines that some person other than those enumerated in § 36-304(b) is liable for damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of such compensation under an award in a compensation order filed with the Mayor shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within 6 months after such award.

(c) A payment made pursuant to §§ 36-309 and 36-340(d)(1) shall operate as an assignment to the employer of all rights of the legal representative of the deceased (hereinafter referred to as “representative”) to recover damages against such third person.

(d) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to:

(A) The expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the Mayor);

(B) The cost of all benefits actually furnished by him to the employee under § 36-307;

(C) All amounts paid as compensation; and

(D) The present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Mayor, and the present value of the cost of all benefits thereafter to be furnished under § 36-307, to be estimated by the Mayor, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative, less one fifth of such excess which shall belong to the employer.

(f) If the person entitled to compensation institutes proceedings within the period ascribed in subsection (b) of this section, the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Mayor determines is payable on account of such injury or death over the amount recovered against such third person.

(g) If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled under this chapter, the employer shall be liable for compensation as determined in subsection (f) of this section, only if the written approval of such compromise is obtained from the employer and his insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise in a form and manner prescribed by the Mayor.

(h) Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representative if he is killed, by the negligence or wrong of any other person or persons in the same employ; provided, that this provision shall not affect the liability of a person other than an officer or employee of the employer. (July 1, 1980, D.C. Law 3-77, § 36, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-307.

**Legislative history of Law 3-77.** — See note to § 36-301.

**Legislative policy.** — This section is not an accidental feature of the legislation. It reflects a conscious legislative policy to permit an employee to pursue his full common-law remedy when the employee believes that the negligence of a third person caused his injury. *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

The policy underlying this section is principally concerned with avoiding double payments on workers' compensation awards. *Felch v. Air Fla., Inc.*, 866 F.2d 1521 (D.C. Cir. 1989).

The intent of Congress in formulating the version of 33 U.S.C. § 933(e), which the Council "borrowed" in 1980, was to permit the employer to recover its legal expenses and to avoid double payment to an employee. *Nguyen v. Liberty Mut. Ins. Co.*, App. D.C., 611 A.2d 541 (1992).

There is no statutory or policy basis for compelling an assignment. *Washington Metro. Area Transit Auth. v. Reid*, App. D.C., 666 A.2d 41 (1995).

**Applicability.** — This section applies only when a workers' compensation claimant settles a claim against a third party who is liable for damages resulting from the same injury for which the claimant is seeking compensation, as a matter of law. *4934, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 605 A.2d 50 (1992).

**Statute of limitations not tolled.** — Where defendant was not plaintiff's employer, but rather a third party, with regard to a workers' compensation claim the statute of limitations on plaintiff's personal injury suit against defendant was not tolled because of the pending workers' compensation claim. *Simpson v. Jack Baker, Inc.*, App. D.C., 620 A.2d 254 (1993).

**Authority delegated to Department of Employment Services.** — This chapter delegates comprehensive powers to the Mayor; pursuant to statute, the Mayor in turn delegated his authority to the Director of the Department of Employment Services by Mayor's Order No. 82-126, 29 DCR 2843 (1982). *Lee v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 509 A.2d 100 (1986).

**"Employer" and "employee" are not interchangeable.** *Nguyen v. Liberty Mut. Ins. Co.*, App. D.C., 611 A.2d 541 (1992).



**Commencement of 6-month period.** — Acceptance of compensation is marked by any acceptance of compensation pursuant to a formal award, rather than receipt of knowledge of the last dollar of compensation, and neither acceptance of compensation nor an underlying award order itself need be comprehensive, complete or fully dispositive of the case, in order to trigger the commencement of the 6-month period. *Cunningham v. George Hyman Constr. Co.*, App. D.C., 603 A.2d 446 (1992).

**Employee actions filed within 6-month period.** — Where employee filed action against third-party tortfeasor within six months of receiving his workers' compensation benefits, employer's lien was not statutory, and subsections (b) and (h) therefore did not apply. *Williams v. Lumbermen's Mut. Cas. Co.*, App. D.C., 664 A.2d 342 (1995).

**Employer not entitled to assignment because employee brought suit.** — Fact that employee had actually brought a suit did not provide any additional basis to force an assignment to which the employer would not have otherwise been entitled. *Washington Metro. Area Transit Auth. v. Reid*, App. D.C., 666 A.2d 41 (1995).

**Right to recover damages upon expiration of 6-month period.** — The 6-month period is brought into play by acceptance of compensation under any award, and after the 6-month period has elapsed without the commencement of a third-party claim by the worker, all rights to recover damages against such third party are automatically assigned to the employer. *Cunningham v. George Hyman Constr. Co.*, App. D.C., 603 A.2d 446 (1992).

Six months after an injured employee accepts a workers' compensation award, that employee's right to sue an allegedly liable third party is exclusively held by the employer. *Smith v. Ogden Allied Servs., Inc.*, 842 F. Supp. 571 (D.D.C. 1994).

Because injured employee accepted a workers' compensation award more than six months prior to his initiation of lawsuit against third party, suit was barred by the applicable statute of limitations. *Smith v. Ogden Allied Servs., Inc.*, 842 F. Supp. 571 (D.D.C. 1994).

**Insurer who paid benefits had equitable lien.** — Claim by a workers' compensation carrier seeking reimbursement from an employee of a corporation for whom, as its insurer, it had paid workers' compensation benefits amounted to an equitable lien on employee's settlement from third-party tortfeasor. *Williams v. Lumbermen's Mut. Cas. Co.*, App. D.C., 664 A.2d 342 (1995).

**Third-party tortfeasor actions.** — A third-party tortfeasor is not immune from actions for negligence under this chapter. *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986).

The Workers' Compensation Act reflects a

quid pro quo between employees and employers; it does not preclude all suits against third parties. *Washington Metro. Area Transit Auth. v. Reid*, App. D.C., 666 A.2d 41 (1995).

**General contractors.** — General contractor is not included in this list of excluded third persons. *Meiggs v. Associated Bldrs., Inc.*, App. D.C., 545 A.2d 631 (1988), cert. denied, 490 U.S. 1116, 109 S. Ct. 3178, 104 L. Ed. 2d 1040 (1989).

**United States not immune.** — United States is not employer under this chapter and is not immune from third-party tortfeasor actions. *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986).

**Gratuitous payment by third party.** — Where the third party had no legal obligation to pay, and a gratuitous payment to plaintiff directly related to the cause of plaintiff's injury was made and intended to compensate him for his injury, plaintiff would be unjustly enriched unless his employer was given a credit for the amount of payment. To hold otherwise would permit double recovery by plaintiff, contrary to the policy underlying this section which is principally concerned with avoiding double payments on workers' compensation awards. *4934, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 605 A.2d 50 (1992).

**No-fault insurance personal injury protection.** — Workers' compensation benefits paid which satisfy in whole or in part the personal injury protection benefits which must be paid under no-fault insurance provisions are effectively personal injury protection payments under § 35-2104, thus, the employer who has paid workers' compensation benefits that partially or fully satisfy the required personal injury protection benefits required under no-fault insurance provisions, § 35-2101 et seq., may, therefore, obtain reimbursement from the insurer of the liable third party. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

The no-fault insurance provisions, § 35-2101 et seq., serve as the primary statutory scheme governing parties' rights in situations in which both no-fault and workers' compensation, § 36-301 et seq., apply, and, although the benefits payable under workers' compensation are primary over no-fault personal injury protection benefits, the remedies under workers' compensation for an employer to recoup benefits paid from liable third parties are not primary over the remedies set forth in the no-fault provisions, thus, in situations where both no-fault and workers' compensation apply, an employer may recoup from benefits paid under workers' compensation only through the avenues provided in no-fault. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

Employer of injured plaintiff may not enforce a lien against plaintiff's civil action recovery for pain and suffering under the no-fault insurance

provisions; the employer's sole remedy for reimbursement for economic losses is against the defendant's insurer. *McCrae v. Marques*, 688 F. Supp. 653 (D.D.C. 1987).

**Start of limitations period.** — The issuance of a final compensation order and the acceptance of payments thereunder by the employee constitute acceptance of compensation under an award in a compensation order so as to begin the running of the statute of limitations period. *Triplett v. George Hyman Constr. Co.*, App. D.C., 565 A.2d 83 (1989).

**Division of litigation costs.** — Any division of litigation costs between an employee

who brings a third-party suit and an employer (or insurance carrier) who joins in that suit cannot be compelled unless the employer and employee (or carrier) agree to such a division. *Nguyen v. Liberty Mut. Ins. Co.*, App. D.C., 611 A.2d 541 (1992).

**Employee's uninsured motorist claim.** — The subrogation provisions of this section are inapplicable to the proceeds of an employee's uninsured motorist claim. *Holmes v. Washington Metro. Area Transit Auth.*, 731 F. Supp. 1115 (D.D.C. 1990).

## § 36-336. Notice of compensation secured.

Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the Mayor, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy. (July 1, 1980, D.C. Law 3-77, § 37, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

## § 36-337. Discharge of liability.

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the Mayor shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer, in respect to such liability, imposed by this chapter upon the employer, as he considers proper in order to effectuate the provisions of this chapter. For such purposes:

(1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier; and

(2) Any requirement by the Mayor or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer. (July 1, 1980, D.C. Law 3-77, § 38, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-338.

**Legislative history of Law 3-77.** — See note to § 36-301.

### § 36-338. Insurance policies.

(a) Every policy or contract of insurance issued under authority of this chapter shall contain:

(1) A provision to carry out the provisions of § 36-337; and

(2) A provision that insolvency or bankruptcy of the employer and discharge therein or both shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this chapter shall be cancelled prior to the date specified in such contract or policy for its expiration until at least 30 days have elapsed after a notice of cancellation has been sent to the Mayor and to the employer in accordance with the provisions of § 36-313 (c). (July 1, 1980, D.C. Law 3-77, § 39, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

### § 36-339. Failure to secure payment of compensation.

(a) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation shall be assessed a civil fine of not less than \$1,000 and not more than \$10,000; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally and personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the chapter in respect to any injury which may occur to any employee or such corporation while it shall so fail to secure the payment of compensation as required by § 36-334.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after 1 of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000 and not more than \$10,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this chapter. (July 1, 1980, D.C. Law 3-77, § 40, 27 DCR 2503; Mar. 6, 1991, D.C. Law 8-198, § 2(g), 37 DCR 6890.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Legislative history of Law 8-198.** — See note to § 36-342.1.



**Mayor authorized to issue rules.** — See note to § 36-301.

**Cited in** *Thompson v. United States*, 670 F. Supp. 5 (D.D.C. 1985).

## § 36-340. Special fund.

(a) There is established in the Treasury of the District of Columbia a special fund for the purpose of making payments in accordance with the provisions of §§ 36-307(c), 36-307(e), 36-308(6), and 36-319(b). Such fund shall be administered by the Mayor.

(b) The Mayor shall be the custodian of the special fund, and all moneys and securities in such fund shall be held in trust by the Mayor and shall not be used for purposes other than those provided by this chapter. The Mayor may invest any portion of the fund which, in the opinion of the Mayor, is not needed for current requirements in bonds or notes of the United States or any federal land bank; provided, that such investments are made pursuant to subchapter III of Chapter 3 of Title 47.

(c) Neither the District of Columbia nor the Mayor shall be liable in respect of payments authorized under §§ 36-307(c), 36-307(e), 36-308(6) and 36-319(b) in any amount greater than the money or property deposited in or belonging to such fund.

(d) Payments into such fund shall be made as follows:

(1) Each employer shall pay \$5,000 as compensation for the death of an employee of such employer resulting from injury where the Mayor determines that there is no person entitled under this chapter to compensation for such death;

(2) All amounts collected as fines and penalties under the provisions of this chapter shall be paid into such fund; and

(3) Any deficit incurred shall be met from the administration fund.

(e) The accounts of the special fund shall be audited in the same manner as similar accounts of the District of Columbia.

(f) All civil penalties provided for in this chapter shall be collected by civil suit brought by the Mayor. (July 1, 1980, D.C. Law 3-77, § 41, 27 DCR 2503.)

**Section references.** — This section is referred to in §§ 36-307, 36-319, 36-335, 36-341, and 36-342.

**Legislative history of Law 3-77.** — See note to § 36-301.

## § 36-341. Administration fund.

(a) There is established in the Treasury of the District of Columbia a fund for the purpose of providing for the payment of all expenses in respect of the administration of this chapter. Such fund shall be administered by the Mayor.

(b) The provisions of subsections (b) and (e) of § 36-340 shall be applicable to the fund established.

(c) At the end of each fiscal year the Mayor shall determine the cost of the administration of this chapter. The cost of administration shall include any expenses to be incurred or which will accrue during such fiscal year.

(d) The total cost so determined shall be pro rated among the carriers and self-insurers authorized to insure under § 36-334. The assessment base shall

be the total amount of compensation and medical payments which such carriers and self-insurers have paid under this chapter during the preceding fiscal year.

(e) The Mayor shall assess each carrier and self-insurer for its pro rata share of the total amount of the administration costs of this chapter in the fiscal year as determined under this section, and shall give written notice by certified or registered mail to each carrier or self-insurer of the assessment against it.

(f) Each assessment shall be paid upon receipt of notice provided for in subsection (e) of this section within such time as the Mayor shall prescribe in regulations made under this section.

(g) The Mayor shall have authority to make such regulations as he deems necessary or appropriate to carry out the purposes of this section, including, but not limited to, provisions for the making and preservation of appropriate records, the inspection of such records, and the submission by carriers and self-insurers of reports prescribed by the Mayor.

(h) In the event of failure by a carrier or self-insurer to pay the assessment referred to in subsection (f) of this section, to make and preserve records in the form and manner required by the Mayor, to file a report in the form and manner required by the Mayor, or to allow the Mayor to inspect records required by regulations issued under this section, the Mayor may suspend or revoke the authorization of a carrier to insure compensation or a self-insurer to act as a self-insurer under this chapter. (July 1, 1980, D.C. Law 3-77, § 42, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-302.

**Legislative history of Law 3-77.** — See note to § 36-301.

## § 36-342. Retaliatory actions by employer prohibited.

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. Any employer who violates this section shall be liable to a penalty of not less than \$100 or more than \$1,000, as may be determined by the Mayor. All such penalties shall be paid to the Mayor for deposit in the special fund as described in § 36-340, and if not paid may be recovered in a civil action brought in the Superior Court of the District of Columbia. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination; provided, that if such employee ceases to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void. (July 1, 1980, D.C. Law 3-77, § 43, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Recovery against employer on tort theory of wrongful discharge prohibited.** — An employee who claims she has been discharged in retaliation for filing a claim under this act may not eschew the administrative remedy and instead obtain recovery against the employer on a tort theory of wrongful discharge under the narrow “public policy” exception to the employment-at-will doctrine recognized in *Adams v. George W. Cochran & Co.*, App. D.C., 597 A.2d 28 (1991). *Nolting v. National Capital Group*, App. D.C., 621 A.2d 1387 (1993).

**Discrimination found.** — Where employer fired employee approximately 24 hours after she had attempted to obtain leave in order to recover from a work-related injury, employee sufficiently established a prima facie case that employer had discharged her in retaliation for attempting to claim workers’ compensation. *Abramson Assocs. v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 596 A.2d 549 (1991).

**Discrimination not found.** — Director Petitioner’s unauthorized act of self-help was not pursuant to any procedures recognized by the Workers’ Compensation Act, and hospital’s discharge of petitioner for failure to attend to food line, while taking medication, was not in and of itself sufficient proof of discrimination against petitioner for having claimed or attempted to claim compensation under the Act. *Dyson v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 566 A.2d 1065 (1989).

Employee’s refusal to obey instruction to return to work based on good faith reliance on opinion of physician she consulted that she was still suffering from a work-related injury amounted to an attempt to claim compensation under the Act and she acquired the protection of the retaliatory discharge provision; but

where transit authority discharged petitioner relying on company policy and three-day unauthorized absence provision of labor agreement, after its medical director found employee fit to return to work and instructed her to do so, there was an insufficient basis for a finding of retaliatory discharge. *Lyles v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 572 A.2d 81 (1990).

Director of Department of Employee Services did not err in ruling that an employer who requires an employee to resign as a condition for receiving a lump-sum settlement did not commit a retaliatory discharge as a matter of law under this section. *Dominique v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 574 A.2d 862 (1990).

As a matter of public policy, settlements are encouraged and are binding on the parties when valid. Settlements cannot take place without a quid pro quo, and claimant must be willing to waive his rights under the Workers’ Compensation Act or there will be no incentive for employers to come to such agreements. Once a claimant, acting in accord with the advice of experienced counsel, agrees to waive such rights in return for a lump-sum and receives that sum, it is entirely reasonable for the director to conclude that, as a matter of law, the employer did not retaliate against the claimant by reaping the benefits of the agreement. *Dominique v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 574 A.2d 862 (1990).

**Amount of hours worked.** — Employer’s discharge of an employee solely because he could work only part-time in a full-time position does not entitle the employee to restoration and compensation under this section. *St. Clair v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 658 A.2d 1040 (1995).

## § 36-342.1. Establishment of Commission.

(a) There is established the Workers’ Compensation Insurance Study Commission (“Commission”).

(b) The Commission shall:

(1) Review the history of workers’ compensation insurance rate structures in the District of Columbia since the enactment of this chapter;

(2) Review the procedure for setting new workers’ compensation insurance rates;

(3) Study alternative structures and mechanisms for setting new workers’ compensation insurance rates;

(4) Study the possibility of the District of Columbia selling workers’ compensation insurance to private employers; and

(5) Report annually to the Mayor and the Council of the District of Columbia on the Commission’s findings.



(c) To the extent feasible, the Mayor shall provide staff support to the Commission from the Department of Employment Services.

(d)(1) The Commission shall consist of:

(A) Two ex officio members who shall be the Directors of the Department of Consumer and Regulatory Affairs and the Department of Employment Services;

(B) Not more than 6 persons from the general public to serve as members who shall be appointed by the Mayor with the advice and consent of the Council within 45 days of enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990; and

(C) The Mayor shall appoint, with the advice and consent of the Council, 1 person from the general public to serve as chairperson of the Commission within 45 days of the enactment of the District of Columbia Workers' Compensation Equity Amendment Act of 1990.

(2) Each member of the Commission shall serve a 3-year term.

(3) The Commission shall appoint other officers and establish rules and procedures as the Commission shall determine.

(4) Any vacancy on the Commission shall be filled in the same manner as the original appointment.

(e) The members of the Commission from the general public shall include representatives from labor, business, the medical community, the insurance industry, and consumer advocates. All members of the Commission shall serve without compensation, but may be reimbursed for reasonable actual expenses incurred in the performance of official duties, pursuant to rules issued by the Mayor in accordance with § 1-612.8.

(f) The Commission shall continue in existence for 3 years at which time the Commission shall terminate unless the Council determines that the Commission shall continue in existence or be reestablished. (July 1, 1980, D.C. Law 3-77, § 43a, as added Mar. 6, 1991, D.C. Law 8-198, § 2(h), 37 DCR 6890.)

**Legislative history of Law 8-198.** — Law 8-198, the "District of Columbia Workers' Compensation Equity Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-74, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 24,

1990, it was assigned Act No. 8-261 and transmitted to both Houses of Congress for its review.

**References in text.** — The "District of Columbia Workers' Compensation Equity Amendment Act of 1990" referred to in (d)(1)(B) and (d)(1)(C), is D.C. Law 8-198.

**Mayor authorized to issue rules.** — See note to § 36-301.

## § 36-343. Appropriations.

There is hereby authorized to be appropriated such sum as is necessary for the Mayor to administer the provisions of this chapter. (July 1, 1980, D.C. Law 3-77, § 44, 27 DCR 2503.)

**Section references.** — This section is referred to in § 36-307.

**Legislative history of Law 3-77.** — See note to § 36-301.

## § 36-344. Severability.

Should a court of competent jurisdiction declare any provision of this chapter to be unconstitutional or beyond the authority of the Council of the District of Columbia, such declaration shall have no effect upon any other provision of this chapter. (July 1, 1980, D.C. Law 3-77, § 45, 27 DCR 2503.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Enactment held within legislative authority.** — District of Columbia Council did not exceed its legislative authority under the District of Columbia Self-Government and Govern-

mental Reorganization Act when it enacted this chapter by D.C. Law 3-77. *District of Columbia v. Greater Wash. Cent. Labor Council*, App. D.C., 442 A.2d 110 (1982), cert. denied, 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487 (1983).

## § 36-345. Effective date.

This chapter shall take effect on 60 days after the expiration of the District of Columbia Workers' Compensation Act Emergency Amendment Act of 1982, after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1). (July 1, 1980, D.C. Law 3-77, § 47, 27 DCR 2503; Apr. 22, 1982, D.C. Law 4-102, § 2, 29 DCR 1179.)

**Legislative history of Law 3-77.** — See note to § 36-301.

**Legislative history of Law 4-102.** — Law 4-102, the "District of Columbia Workers' Compensation Act of 1979 Amendments Act of 1982," was introduced in Council and assigned Bill No. 4-314, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 9, 1982, and February 23, 1982, respectively. Signed by the Mayor on February 26, 1982, it was assigned Act No. 4-161 and transmitted to both Houses of Congress for its review.

**References in text.** — The "District of Columbia Workers' Compensation Act Emergency Amendment Act of 1982," referred to near the

beginning of this section, is D.C. Act 4-160. Act 4-160 expired on May 26, 1982. Consequently, this chapter took effect on July 24, 1982.

**Cited in** *In re Metro Subway Accident Referral*, 630 F. Supp. 385 (D.D.C. 1984), aff'd sub nom. *Keener v. Washington Metro. Area Transit Auth.*, 800 F.2d 1173 (D.C. Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690 (1987); *O'Connell v. Maryland Steel Erectors, Inc.*, App. D.C., 495 A.2d 1134 (1985), cert. denied, 475 U.S. 1066, 106 S. Ct. 1378, 89 L. Ed. 2d 603 (1986); *Allen v. United States*, 625 F. Supp. 841 (D.D.C. 1986); *Smith v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 548 A.2d 95 (1988); *Railco Multi-Construction Co. v. Gardner*, App. D.C., 564 A.2d 1167 (1989).

## CHAPTER 4. VOLUNTARY APPRENTICES.

Sec.

- 36-401. Purposes of chapter.
- 36-402. Apprenticeship Council; membership; term; compensation.
- 36-403. Director of Apprenticeship; assistance authorized.
- 36-404. Meetings of Apprenticeship Council; rules and regulations; reports.
- 36-405. Administration of chapter; responsibility of Board of Education.
- 36-406. Transfer of functions; abolition of Office of Director of Apprenticeship [Charter Provision].
- 36-407. Apprenticeship committees.

Sec.

- 36-408. "Apprentice" defined.
- 36-409. Registration of apprenticeship program required.
- 36-410. Apprenticeship agreements — Contents.
- 36-411. Same — Registration and approval; extension into majority of apprentice.
- 36-412. Same — Violations; hearings; determinations; appeals.
- 36-413. Application of chapter.
- 36-414. "Secretary of Labor" defined.
- 36-415. Severability.

**§ 36-401. Purposes of chapter.**

It is the purpose of this chapter to open to young people in the District of Columbia the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprenticeship agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an apprenticeship council; to provide for the establishment of local joint trade apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a director of apprenticeship within the District of Columbia; to provide for reports to the Congress and to the public regarding the status of apprenticeship in the District of Columbia; to establish a procedure for the determination of apprenticeship agreement controversies; and to accomplish related ends. (May 21, 1946, 60 Stat. 204, ch. 267, § 1; 1973 Ed., § 36-121.)

**§ 36-402. Apprenticeship Council; membership; term; compensation.**

Without regard for any other provision of law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Mayor of the District of Columbia shall appoint and the Council shall confirm an Apprenticeship Council, to be composed of 11 members, as follows: three representatives from employer organizations, 3 representatives from employee organizations, and 3 public representatives, who are not members of either employee or employer organizations, chosen to make the Apprenticeship Council better reflect the composition of the District of Columbia labor force, including women and minorities who are traditionally under-represented in the trades, and 2 representatives of government, who shall be the Mayor of the District of Columbia and the Superintendent of Schools or their respective



delegates. The terms of office of the members of the Apprenticeship Council first appointed by the Mayor shall expire as designated by the Mayor at the time of making the appointment: one representative each of employers, employees and the public being appointed for 1 year; 1 representative each of employers, employees and the public appointed for 2 years; and 1 representative each of employers, employees and the public for 3 years. Thereafter, each member shall be appointed for a term of 3 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. The compensation of each member not otherwise compensated by public money shall be paid not more than \$25 per day for each day spent in attendance at meetings of the Apprenticeship Council; provided, however, that any applicable laws passed by the Council of the District of Columbia shall supersede the provisions of this section. (May 21, 1946, 60 Stat. 204, ch. 267, § 2; 1973 Ed., § 36-122; Mar. 3, 1979, D.C. Law 2-139, § 3205(ff), 25 DCR 5740; Mar. 6, 1979, D.C. Law 2-156, § 2, 25 DCR 6991.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

As to apprentices and contracts of apprenticeship, see §§ 36-408 to 36-412.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 2-139.** — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it

was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-156.** — Law 2-156, the "Amendments to an Act to Provide for Voluntary Apprenticeship in the District of Columbia Act of 1978," was introduced in Council and assigned Bill No. 2-325, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-325 and transmitted to both Houses of Congress for its review.

## § 36-403. Director of Apprenticeship; assistance authorized.

The Secretary of Labor shall appoint a Director of Apprenticeship who shall serve without compensation and who shall have no vote. Without regard for the provisions of any other law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Director of Apprenticeship shall be chosen from among the employees of the Apprentice-Training Service actually engaged in formulating and promoting standards of apprenticeship under the provisions of Public Law No. 308 (29 U.S.C. §§ 50-50b). The Apprentice-Training Service is further authorized to supply the Director or the Council with such clerical, technical, and professional assistance as shall be deemed by said Service to be essential to effectuate the purposes of this chapter. (May 21, 1946, 60 Stat. 204, ch. 267, § 3; 1973 Ed., § 36-123.)

**Cross references.** — As to abolition of Director of Apprenticeship and transfer of functions, see § 36-406.

**Section references.** — This section is referred to in § 36-406.

### § 36-404. Meetings of Apprenticeship Council; rules and regulations; reports.

The Apprenticeship Council shall meet at the call of the Director, or the chairman thereof, and shall aid in formulating policies for the effective administration of this chapter. Subject to the approval of the Secretary of Labor, the Apprenticeship Council shall establish standards for apprenticeship agreements in accordance with those prescribed by this chapter, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said chapter, and shall perform such other functions as are necessary to carry out the intent of this chapter. Not less than once every 2 years the Apprenticeship Council shall make a report through the Mayor of its activities and findings to the Congress and to the public. (May 21, 1946, 60 Stat. 205, ch. 267, § 4; 1973 Ed., § 36-124.)

**Cross references.** — As to the abolition of Director of Apprenticeship and transfer of functions, see § 36-406.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 36-405. Administration of chapter; responsibility of Board of Education.

The Director, under the supervision of the Secretary of Labor and with the advice and guidance of the Apprenticeship Council, is authorized to administer the provisions of this chapter in cooperation with the Apprenticeship Council and local joint trade apprenticeship committees, to set up conditions and training standards for apprentices, which conditions or standards shall in no case be lower than those prescribed by this chapter; to act as secretary of the Apprenticeship Council and of joint trade apprenticeship committees; to approve, if, in his opinion, approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established by or in accordance with this chapter; to terminate or cancel any apprenticeship agreement in accordance with the provisions of such agreement; and to perform such other duties as are necessary to carry out the intent of this chapter; provided, that the administration and supervision of related and supplemental instruction for apprentices, coordination of the instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the District Board of Education. (May 21, 1946, 60 Stat. 205, ch. 267, § 5; 1973 Ed., § 36-125.)

**Cross references.** — As to the abolition of Director of Apprenticeship and transfer of functions, see § 36-406.

## § 36-406. Transfer of functions; abolition of Office of Director of Apprenticeship [Charter Provision].

All functions of the Secretary of Labor and of the Director of Apprenticeship under this chapter are transferred to and shall be exercised by the Mayor. The Office of Director of Apprenticeship provided for in § 36-403 is abolished. (1973 Ed., § 36-125a; Dec. 24, 1973, 87 Stat. 783, Pub. L. 93-198, title II, § 204(d).)

**Charter provisions.** — This section of the D.C. Code is § 204(d) of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of the Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred

all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — The definitions in § 1-202 apply to this section.

## § 36-407. Apprenticeship committees.

Local joint trade apprenticeship committees in any trade or group of trades may be approved by the Apprenticeship Council. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives appointed by the groups or organizations they represent, or the committee may consist of the employer and not less than 2 representatives from the recognized bargaining agency. In a trade or group of trades in which there is no bona fide employee organization, the Apprenticeship Council may appoint a joint trade apprenticeship committee from persons known to represent the interests of employers and of employees, or the Council may act itself as such joint committee. Subject to the review of the Council, and in accordance with standards established by or under authority of this chapter, joint trade apprenticeship committees may set up standards to govern the training of apprentices and give such aid as may be necessary in effectuating such standards. (May 21, 1946, 60 Stat. 205, ch. 267, § 6; 1973 Ed., § 36-126.)

## § 36-408. "Apprentice" defined.

The term "apprentice," as used herein, shall mean a person at least 16 years of age who has entered into a written agreement, hereinafter called an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for



not less than 2,000 hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in related and supplemental subjects. (May 21, 1946, 60 Stat. 205, ch. 267, § 7; 1973 Ed., § 36-127; Mar. 6, 1979, D.C. Law 2-156, § 4, 25 DCR 6991.)

**Legislative history of Law 2-156.** — See note to § 36-402.

### **§ 36-409. Registration of apprenticeship program required.**

Ninety days after the effective date of this section, all prime contractors and subcontractors who contract with the District of Columbia government to perform construction or renovation work with a single contract or cumulative contracts of at least \$500,000, let within a 12-month period, shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council. (1973 Ed., § 36-127.1; Mar. 6, 1979, D.C. Law 2-156, § 5, 25 DCR 6991.)

**Section references.** — This section is referred to in § 43-1841.

**Legislative history of Law 2-156.** — See note to § 36-402.

### **§ 36-410. Apprenticeship agreements — Contents.**

Every apprenticeship agreement entered into under this chapter shall contain:

- (1) The names and signatures of the contracting parties, including the apprentice's parent or guardian if he be a minor;
- (2) The date of birth of the apprentice;
- (3) A statement of the trade, craft, or business which the apprentice is to be taught and the time at which the apprenticeship will begin and end;
- (4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year;
- (5) A statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process;
- (6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated;
- (7) A statement providing for a period of probation during which time the apprenticeship agreement shall be terminated by the Director at the request in writing of either party, and providing that after such probationary period the apprenticeship agreement may be terminated by the Director by mutual agreement of all parties thereto, or canceled by the Director for good and sufficient reasons;
- (8) A provision that all controversies or differences concerning the apprenticeship agreement which cannot be adjusted by conference between the apprentice and the employer or under the terms of the apprenticeship

standard shall be submitted to the Director for determination as provided for in § 36-411;

(9) A provision that an employer who is unable to fulfill his obligation under the apprenticeship agreement may, with the approval of the Director or under the direction of the joint trade apprenticeship committee, transfer such contract to any other employer: Provided, that the apprentice consents and that such other employer agrees to assume the obligations of said apprenticeship agreement; and

(10) Such additional terms and conditions as may be prescribed or approved by the Council not inconsistent with the provisions of this chapter. (May 21, 1946, 60 Stat. 206, ch. 267, § 8; 1973 Ed., § 36-128.)

**Cross references.** — As to the abolition of Director of Apprenticeship and transfer of functions, see § 36-406.

### § 36-411. Same — Registration and approval; extension into majority of apprentice.

No apprenticeship agreement shall be registered or approved by the Director under the provisions of this chapter unless it conforms with the standards established by or in accordance with this chapter and is in the best interests of the apprentice. Where a minor enters into an agreement for a period of training extending into his majority, and such agreement has been approved by the Director, then such apprenticeship agreement shall, if the parties therein so provide, have the same force and effect during the period covered by the majority of such minor as if such agreement were entered into during the majority of such minor. (May 21, 1946, 60 Stat. 206, ch. 267, § 9; 1973 Ed., § 36-129.)

**Cross references.** — As to the abolition of Director of Apprenticeship and transfer of functions, see § 36-406.

**Section references.** — This section is referred to in § 36-410.

### § 36-412. Same — Violations; hearings; determinations; appeals.

(a) Upon the complaint of any interested person or upon his own initiative, the Director may investigate to determine if there has been a violation of the terms of an apprenticeship agreement made under this chapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such an agreement shall be given a fair and impartial hearing after reasonable notice thereof. All such hearings, investigations, and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council, subject to the approval of the Secretary of Labor.

(b) The determination of the Director shall be filed with the Council. If no appeal therefrom is filed with the Council within 10 days after the date thereof, as herein provided, such determination shall become the order of the Council. Any person aggrieved by any determination or action of the Director may

appeal therefrom to the Council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, §§ 1-1501 to 1-1510). (May 21, 1946, 60 Stat. 206, ch. 267, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(e); 1973 Ed., § 36-130.)

**Cross references.** — As to the abolition of Director of Apprenticeship and transfer of functions, see § 36-406.

### **§ 36-413. Application of chapter.**

The provisions of this chapter shall apply to any person, firm, corporation, or craft in the District of Columbia which has voluntarily elected to conform with its provisions. (May 21, 1946, 60 Stat. 207, ch. 267, § 11; 1973 Ed., § 36-131.)

### **§ 36-414. “Secretary of Labor” defined.**

As used or referred to in this chapter the term “the Secretary of Labor” shall mean the administrator of that department or agency of the United States government authorized to administer the provisions of Public Law No. 308 (29 U.S.C. §§ 50-50b). (May 21, 1946, 60 Stat. 207, ch. 267, § 12; 1973 Ed., § 36-132.)

### **§ 36-415. Severability.**

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (May 21, 1946, 60 Stat. 207, ch. 267, § 14; 1973 Ed., § 36-133.)



## CHAPTER 5. EMPLOYMENT OF MINORS.

Sec.	Sec.
36-501. Employment of minors under 14 years of age; distribution of newspapers permitted.	36-513. Penalties.
36-502. Employment of minors under 18 years of age; hours of employment; notice to be posted in place of employment; list of minors employed.	36-514. Board of Education to enforce law; inspection of places in which minors are employed.
36-503. Employment dangerous or prejudicial to life prohibited; Board of Education to prohibit such employment by general or special order.	36-515. Limitations on employment in stuffing, sale and distribution of newspapers; exercise of trades in streets; exception for distribution of political literature.
36-504. Employment of minors under 16 years of age in certain occupations prohibited; exception.	36-516. Street-trades badges — Required.
36-505. Employment of minors under 18 years of age in certain occupations prohibited.	36-517. Same — Application requirements.
36-506. Theatrical permits for minors under 18 years of age for performances and professional sports activities.	36-518. Same — Contents; record to be kept; badges not transferable.
36-507. Work or vacation permit — Procurement by employer.	36-519. Violation of §§ 36-515 to 36-521; revocation of badge or work permit.
36-508. Same — Issue by Board of Education; contents; records of applicants.	36-520. Persons selling merchandise to minor for resale or distribution to ascertain that minor wears badge; penalties; exception.
36-509. Same — Application requirements.	36-521. Loitering around business establishments prohibited during school hours; penalty.
36-510. Evidence of age.	36-522. Severability.
36-511. Vacation permits.	36-523. Board of Education authorized to enforce chapter, make regulations, delegate functions, and appoint inspectors.
36-512. Employer to furnish, on demand, proof of age of employee.	36-524. Prosecutions.

### § 36-501. Employment of minors under 14 years of age; distribution of newspapers permitted.

Except as provided in §§ 36-506 and 36-507, no minor under 14 years of age shall be employed, permitted, or suffered to work in the District of Columbia, in, about, or in connection with any gainful occupation, with the exemption of housework performed outside of school hours in the home of the minor's parent or legal guardian or agricultural work performed outside of school hours in connection with the minor's own home and directly for the minor's parent or legal guardian; provided, that minors 10 years of age and over may be employed outside of school hours in the distribution or sale of newspapers, subject to the provisions of §§ 36-515 to 36-521. (May 29, 1928, 45 Stat. 998, ch. 908, § 1; 1973 Ed., § 36-201; June 15, 1976, D.C. Law 1-68, § 2(1), 23 DCR 512.)

**Cross references.** — As to compulsory school attendance and work permits, see §§ 31-401 to 31-403.

As to the penalties for violation of §§ 36-515 to 36-521, see § 36-519.

**Section references.** — This section is referred to in §§ 36-502 and 36-507.

**Legislative history of Law 1-68.** — Law 1-68, the "Child Labor Amendments Act of

1976," was introduced in Council and assigned Bill No. 1-48, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and second readings on February 24, 1976, and March 9, 1976, respectively. Signed by the Mayor on April 5, 1976, it was assigned Act No. 1-105 and transmitted to both Houses of Congress for its review.

**Cited** in *Hughes v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 498 A.2d 567 (1985); *Brandt v. Stidham Tire Co.*, 785 F.2d 329 (D.C. Cir. 1986); *Featherstone v. Omni Constr., Inc.*, 114 WLR 101 (Super. Ct. 1986); *Ferreira v. District of Columbia Dep't of Emp.*

*Servs.*, App. D.C., 531 A.2d 651 (1987), *aff'd*, App. D.C., 667 A.2d 310 (1995); *Ray v. District of Columbia*, App. D.C., 535 A.2d 868 (1987); *McBride v. Eastman Kodak Co.*, 844 F.2d 797 (D.C. Cir. 1988).

### **§ 36-502. Employment of minors under 18 years of age; hours of employment; notice to be posted in place of employment; list of minors employed.**

Except as provided in § 36-506, no minor under 18 years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work, or housework, or in the distribution or sale of newspapers, as prescribed in § 36-501, and except in newspaper stuffing, subject to the provisions of § 36-515, more than 6 consecutive days in any 1 week, or more than 48 hours in any 1 week, or more than 8 hours in any 1 day, nor shall any minor 16 or 17 years of age be employed, permitted, or suffered to work before 6:00 a.m. or after 10:00 p.m. of any day; nor shall any minor under 16 years of age be employed, permitted, or suffered to work before 7:00 a.m. or after 7:00 p.m. of any day, except during the summer (June 1 through Labor Day) when the evening hour shall be 9:00. Every employer shall post and keep conspicuously posted in the establishment, in or about which any minor is employed, permitted, or suffered to work, a printed notice, furnished by the official authorized to enforce this chapter, setting forth the legal regulations governing the employment and hours of work of minors and occupations prohibited to minors in such establishments, and, in addition, shall keep accessible in the place of employment a list of minors under 18 employed, permitted, or suffered to work, and an accurate time record showing the hours of beginning and ending work each day. The presence of any such minor in the place of work for a longer time in the day or week than stated in the printed regulation hours shall be *prima facie* evidence of a violation of the provisions of this section. (May 29, 1928, 45 Stat. 999, ch. 908, § 2; 1973 Ed., § 36-202; June 15, 1976, D.C. Law 1-68, § 2(2), 23 DCR 512.)

**Legislative history of Law 1-68.** — See note to § 36-501.

**Cited** in *Ferreira v. District of Columbia*

*Dep't of Emp. Servs.*, App. D.C., 531 A.2d 651 (1987), *aff'd*, App. D.C., 667 A.2d 310 (1995).

### **§ 36-503. Employment dangerous or prejudicial to life prohibited; Board of Education to prohibit such employment by general or special order.**

No minor shall be employed, permitted, or suffered to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health, safety, or welfare of such minor. It shall be the duty of the Board of Education of the District of Columbia and the said board shall have the power, jurisdiction and authority, after hearing duly held, to issue general or special orders prohibiting the employment of such minors in any employment or at any place of employment dangerous or prejudicial to the life, health, safety, or

welfare of such minors; provided, that no such order shall permit the employment of any minor at any employment specified in §§ 36-504 through 36-506 at a lower age than the age therein specified; provided further, that no hearing shall be necessary for the issuance of an order prohibiting employment in any occupation found by the Secretary of Labor under the authority of the Fair Labor Standards Act to be particularly hazardous for minors under 18 years of age or detrimental to their health and well-being. (May 29, 1928, 45 Stat. 999, ch. 908, § 3; 1973 Ed., § 36-203; June 15, 1976, D.C. Law 1-68, § 2(3), 23 DCR 514.)

**Section references.** — This section is referred to in §§ 36-507 and 36-513.

**Legislative history of Law 1-68.** — See note to § 36-501.

**References in text.** — The Fair Labor Stan-

dards Act, referred to near the end of this section, is the Act of June 25, 1938, 52 Stat. 1060, ch. 676, which is codified in 29 U.S.C. §§ 201 to 219.

## § 36-504. Employment of minors under 16 years of age in certain occupations prohibited; exception.

(a) No minor under 16 years of age shall be employed, permitted, or suffered to work at any of the following occupations:

(1) In the operation of any machinery operated by power other than hand or foot power; or

(2) In oiling, wiping, or cleaning machinery or assisting therein.

(b) This section does not apply to any duly approved vocational education program or training under the auspices of the Board of Education or the Trustees of the University. (May 29, 1928, 45 Stat. 999, ch. 908, § 4; 1973 Ed., § 36-204; June 15, 1976, D.C. Law 1-68, § 2(4), 23 DCR 514.)

**Section references.** — This section is referred to in § 36-503.

**Legislative history of Law 1-68.** — See note to § 36-501.

## § 36-505. Employment of minors under 18 years of age in certain occupations prohibited.

No minor under 18 years of age shall be employed, permitted, or suffered to work at operating any freight or nonautomatic elevator, or in any quarry, tunnel, or excavation. (May 29, 1928, 45 Stat. 999, ch. 908, § 5; 1973 Ed., § 36-205; June 15, 1976, D.C. Law 1-68, § 2(5), 23 DCR 514.)

**Section references.** — This section is referred to in § 36-503.

**Legislative history of Law 1-68.** — See note to § 36-501.

## § 36-506. Theatrical permits for minors under 18 years of age for performances and professional sports activities.

(a) The Board of Education may issue a theatrical employment permit to a minor under 18 years of age permitting the minor to:

(1) Perform on the stage of a licensed theatre within the District of Columbia in a professional theatrical production;



- (2) Perform in a musical or dance recital or concert;
- (3) Participate in a radio or television program;
- (4) Participate in a motion picture;
- (5) Appear as a fashion model; or
- (6) Participate in a professional sports activity or circus.

(b) An application for a theatrical permit shall be made by the parent or guardian, and by the agent if applicable, of the minor to the Board of Education. The Board of Education may issue a theatrical employment permit if the Board is satisfied that adequate provisions have been made for the educational instruction of the minor, for safeguarding the minor's health, and for the proper supervision of the minor. The Board of Education may require the employer to provide the necessary resources to satisfy the requirements of this subsection.

(c) A minor shall not appear in more than 2 live performances in 1 day or more than 8 live performances in 1 week. A minor shall not appear in a live performance, or otherwise be required to work, before 7:00 a.m. or after 11:30 p.m. A licensed practical nurse with substantial pediatric experience, or a registered nurse who is a pediatric nurse practitioner, shall be provided for each 3 or fewer infants under the age of 30 months.

(d) A theatrical employment permit shall limit the time during which a minor 7 years of age or younger is permitted at the place of employment within a 24-hour period according to age as follows:

(1) An infant under the age of 6 months may be permitted to remain at the place of employment for a maximum of 2 hours, which shall consist of not more than 20 minutes of work.

(2) A minor between the ages of 6 months and 30 months may be permitted at the place of employment for a maximum of 4 hours, which shall consist of not more than 2 hours of work, with the balance of the 4-hour period being rest or recreation.

(3) A minor between the ages of 30 months and 7 years may be permitted at the place of employment for a maximum of 6 hours, which shall consist of not more than 3 hours of work, with the balance of the 6-hour period being rest, recreation, or education.

(e) For the purposes of this section, the term "theatrical employment permit" means an authorization to perform or appear in any of the activities listed in subsection (a) of this section for monetary remuneration, a gift, or other form of valuable consideration. (May 29, 1928, ch. 908, § 7a; Dec. 26, 1941, 55 Stat. 863, ch. 632, § 2; July 3, 1952, 66 Stat. 329, ch. 569, § 1; 1973 Ed., § 36-207a; renumbered as § 6 and amended June 15, 1976, D.C. Law 1-68, § 2(8), 23 DCR 515; July 12, 1988, D.C. Law 7-135, § 2(a), 35 DCR 4144.)

**Section references.** — This section is referred to in §§ 36-501, 36-502, and 36-503.

**Legislative history of Law 1-68.** — See note to § 36-501.

**Legislative history of Law 7-135.** — Law 7-135, the "District of Columbia Minor Theatrical Employment Permit Amendment Act of 1988," was introduced in Council and assigned

Bill No. 7-397, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on April 19, 1988, and May 3, 1988, respectively. Signed by the Mayor on May 19, 1988, it was assigned Act No. 7-185 and transmitted to both Houses of Congress for its review.

### § 36-507. Work or vacation permit — Procurement by employer.

No minor under 18 years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work or housework as specified in § 36-501, unless the employer procures and keeps on file and accessible to any attendance officer, inspector or other person authorized to enforce this chapter a work or vacation permit issued as hereinafter prescribed, except that minors under 18 years of age may be employed without a permit outside of school hours in irregular or casual work usual to the home of the employer; provided, that such employment shall not be in connection with nor form a part of the business, trade, profession, or occupation of the employer; and provided further, that such employment shall not be specifically prohibited by any provision of this chapter or by any order issued under the authority of § 36-503. (May 29, 1928, 45 Stat. 1000, ch. 908, § 8; 1973 Ed., § 36-208; renumbered as § 7 and amended June 15, 1976, D.C. Law 1-68, § 2(9), 23 DCR 516.)

**Section references.** — This section is referred to in § 36-501.

**Legislative history of Law 1-68.** — See note to § 36-501.

### § 36-508. Same — Issue by Board of Education; contents; records of applicants.

The work or vacation permit required by this chapter shall be issued by the Board of Education and shall state the name, sex, date, and place of birth, and place of residence of the minor, the grade last completed by said minor, and the kind of evidence of age accepted, and such other details as may be necessary for the identification of the minor. It shall certify that all the requirements for issuing a work or vacation permit under the provisions of this chapter have been fulfilled and shall be signed by the person issuing it. It shall state the name and address of the employer for whom and the nature of the specific occupation in which the work permit authorizes the minor to be employed, and no permit shall be valid except for the employer so named and for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the minor for whom it is issued in the presence of the person issuing it, and shall be mailed or delivered to the employer. The Board shall maintain an office record for each applicant containing the minor's name, sex, date and place of birth; evidence of age, residence, name and address of the employer; and nature of the specific occupation in which the minor is employed; the grade and school last attended by the minor; the employer's statement of intention to employ; and the parent's, guardian's, or custodian's written consent if such written consent is required. (May 29, 1928, 45 Stat. 1000, ch. 908, § 9; 1973 Ed., § 36-209; renumbered as § 8 and amended June 15, 1976, D.C. Law 1-68, § 2(10), 23 DCR 516.)

**Legislative history of Law 1-68.** — See note to § 36-501.

### § 36-509. Same — Application requirements.

The Board of Education shall issue a work or vacation permit only upon application in person of the minor desiring employment, and upon submission to and approval by the Board of the following:

(1) A statement signed by the prospective employer or the employer's authorized agent, stating that the employer expects to give such minor present employment, setting forth the specific nature of the occupation in which such minor will be employed, and the number of hours per day and of days per week which said minor will be employed;

(2) Evidence of age as provided in § 36-510;

(3) Written consent of the parent, guardian, or custodian, if the minor is under 16 years of age, specifying permission for employment of such minor: Provided, that if such minor is withdrawing from school for purposes of employment, the parent, guardian or custodian must appear in person before the issuing officer and sign the consent form;

(4) A school record, if the minor is under 16 years of age and is withdrawing from school for purposes of employment, signed by the principal of the public, private or parochial school last attended by the minor, or by a person duly authorized by said principal. The school record shall certify that the minor has completed the 8th grade or the equivalent thereof in a public school, or has regularly received, in a private or parochial school, instruction deemed equivalent by the Board of Education to that prescribed for the completion of the 8th grade in the public school of the District of Columbia. The school record shall contain also the full name, date of birth, grade last completed, and residence of the minor as shown on the records of the school; and

(5) A certificate, if the person is less than 16 years of age, of physical fitness for the employment specified in the statement submitted in accordance with paragraph (1) of this section. Such certificate shall be signed by a licensed physician. (May 29, 1928, 45 Stat. 1001, ch. 908, § 10; 1973 Ed., § 36-210; renumbered as § 9 and amended June 15, 1976, D.C. Law 1-68, § 2(11), 23 DCR 517.)

**Legislative history of Law 1-68.** — See **Cited in** *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

### § 36-510. Evidence of age.

The evidence of age required by this chapter shall consist of 1 of the following proofs of age, which shall be required in the order herein designated:

(1) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births;

(2) A record of age as given in the records of the school first attended by the minor, if obtainable, or in the earliest available school census;

(3) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the minor; or

(4) A bona fide contemporary record of the date and place of the minor's birth kept in the Bible in which the records of the births in the family of the



minor are preserved, or other documentary evidence satisfactory to the Board of Education, such as a passport showing the age of the minor, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the minor, or a life insurance policy. (May 29, 1928, 45 Stat. 1001, ch. 908, § 11; 1973 Ed., § 36-211; renumbered as § 10 and amended June 15, 1976, D.C. Law 1-68, § 2(12), 23 DCR 519.)

**Section references.** — This section is referred to in §§ 36-509 and 36-511.

**Legislative history of Law 1-68.** — See note to § 36-501.

## § 36-511. Vacation permits.

The Board of Education shall have authority to issue a vacation permit to a minor between the age of 14 and 16 years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, if the age of such minor has been proved according to § 36-510, and such minor has in all other respects, except as to completion of the 8th grade, fulfilled the requirements for a work permit specified in this chapter. These permits shall be different in color from the work permit allowing employment while school is in session and shall state the periods during which its use is valid. (May 29, 1928, 45 Stat. 1002, ch. 908, § 12; 1973 Ed., § 36-212; renumbered as § 11 and amended June 15, 1976, D.C. Law 1-68, § 2(13), 23 DCR 520.)

**Legislative history of Law 1-68.** — See note to § 36-501.

## § 36-512. Employer to furnish, on demand, proof of age of employee.

Whenever any person authorized to enforce this chapter shall have reason to doubt that any minor employed in any occupation for which a permit is required by this chapter, and for whom a work permit or vacation permit is not on file, has reached the age of 18 years, such person may make demand on such minor's employer that such employer shall either furnish him within 10 days the evidence required for a work permit showing that the minor is in fact 18 years of age, or shall refuse to employ or permit or suffer such minor to work. In case such evidence is not furnished to such person within 10 days after such demand, the employer shall not thereafter continue to employ such minor or permit or suffer such minor to work in such establishment. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of this chapter, that such minor is under 18 years of age and is unlawfully employed. (May 29, 1928, 45 Stat. 1002, ch. 908, § 14; 1973 Ed., § 36-214; renumbered as § 12 and amended June 15, 1976, D.C. Law 1-68, § 2(15), 23 DCR 521.)

**Legislative history of Law 1-68.** — See note to § 36-501.

**Cited in** Club 99, Inc. v. District of Columbia ABC Bd., App. D.C., 457 A.2d 773 (1982).

### § 36-513. Penalties.

(a) A person commits an offense under this chapter if that person:

(1) Employs a minor or permits a minor to work in violation of this chapter, of any regulation promulgated by the Board of Education pursuant to § 36-523, or of any order issued under the provisions of § 36-503; or

(2) Interferes with the Board of Education, its officers or agents, or any other person authorized by the District to inspect places of employment of minors.

(b) A person convicted of a 1st offense under this section shall be fined not less than \$1,000 nor more than \$3,000, or imprisoned not less than 10 days nor more than 30 days, or both. A person convicted of a 2nd or subsequent offense under this section shall be fined not less than \$3,000 nor more than \$5,000, or imprisoned not less than 30 days nor more than 90 days, or both. Each day during which a violation of this chapter occurs shall constitute a separate offense. (May 29, 1928, 45 Stat. 1003, ch. 908, § 15; 1973 Ed., § 36-215; renumbered as § 13 and amended June 15, 1976, D.C. Law 1-68, § 2(16), 23 DCR 521; July 12, 1988, D.C. Law 7-135, § 2(b), 35 DCR 4114.)

**Legislative history of Law 1-68.** — See note to § 36-501.

**Legislative history of Law 7-135.** — See note to § 36-506.

### § 36-514. Board of Education to enforce law; inspection of places in which minors are employed.

It shall be the duty of the Board of Education to cause all the provisions of this chapter to be enforced, to make complaints against persons violating its provisions, and to prosecute violations of the same. The Board of Education, its inspectors, and agents are empowered and instructed to visit and inspect at any time, and as often as shall be necessary in order effectively to enforce the provisions of this chapter, all places where minors are employed, and shall have authority to enter any place or establishment covered by the terms of this chapter, and to have access to work or vacation permits kept on file by the employer and such other records as may aid in the enforcement of this chapter. (May 29, 1928, 45 Stat. 1003, ch. 908, § 16; 1973 Ed., § 36-216; renumbered as § 14 and amended June 15, 1976, D.C. Law 1-68, § 2(17), 23 DCR 521.)

**Legislative history of Law 1-68.** — See note to § 36-501.

### § 36-515. Limitations on employment in stuffing, sale and distribution of newspapers; exercise of trades in streets; exception for distribution of political literature.

No minor under 16 years of age shall be employed in the stuffing of newspapers, nor shall the work of any minor 16 or 17 employed stuffing newspapers exceed 40 hours in any 1 week, nor shall such minor be employed on more than 1 night in any week. No minor under 12 years of age shall

distribute, sell, expose, or offer for sale any newspapers, magazines, periodicals, or any other articles or merchandise of any description, or distribute handbills or circulars, except political literature as specified below, in any street or public place, or exercise the trade of bootblack or any other trade, in any street or public place; provided, that the provisions of this chapter shall not apply to minors 10 years of age and over engaged in the distribution of newspapers, magazines, or periodicals on fixed routes; provided further, that no minor under 16 years of age shall be employed or permitted or suffered to work at any of the trades or occupations mentioned in this section, in any street or public place, after 7:00 p.m. or before 6:00 a.m., or, unless holding a work permit issued in accordance with the provisions of this chapter, during the hours when such minor's school is in session. Nothing in this section shall be construed as prohibiting the distribution or circulation, by a minor, of political literature or petitions, or such other materials, for which the minor receives no pecuniary compensation. (May 29, 1928, 45 Stat. 1003, ch. 908, § 17; 1973 Ed., § 36-217; renumbered as § 15 and amended June 15, 1976, D.C. Law 1-68, § 2(18), 23 DCR 522.)

**Section references.** — This section is referred to in §§ 36-501, 36-502, 36-516, 36-517, 36-518, 36-519, and 36-520.

**Legislative history of Law 1-68.** — See note to § 36-501.

### § 36-516. Street-trades badges — Required.

No minor under 16 years of age shall work at any time, or be employed or permitted or suffered to work at any time, in any of the trades or occupations mentioned in § 36-515, unless such minor shall have procured and shall wear in plain sight while so working a badge as hereinafter provided, issued by the Board of Education, and unless the minor complies with all the legal requirements concerning school attendance. (May 29, 1928, 45 Stat. 1004, ch. 908, § 19; 1973 Ed., § 36-219; renumbered as § 16 and amended June 15, 1976, D.C. Law 1-68, § 2(20), 23 DCR 523.)

**Section references.** — This section is referred to in §§ 36-501, 36-519, and 36-520.

**Legislative history of Law 1-68.** — See note to § 36-501.

### § 36-517. Same — Application requirements.

The Board of Education shall issue a street-trades badge only upon the application of the minor desiring it, with the written consent of the parent, guardian, or custodian of such minor, and upon proof that the minor is of the age required by § 36-515, which shall consist of the same evidence as is required for a work permit under this chapter. A work permit issued as required by this chapter may be accepted in lieu of any other requirements for said badge. (May 29, 1928, 45 Stat. 1004, ch. 908, § 20; 1973 Ed., § 36-220; renumbered as § 17 and amended June 15, 1976, D.C. Law 1-68, § 2(21), 23 DCR 524.)

**Section references.** — This section is referred to in §§ 36-501, 36-519, and 36-520.

**Legislative history of Law 1-68.** — See note to § 36-501.



**§ 36-518. Same — Contents; record to be kept; badges not transferable.**

Such badge shall bear a number, and every such badge on its reverse side shall be signed in the presence of the officer issuing the same by the minor in whose name it is issued and shall contain the minor's name, address and date of birth and such other information as the officer issuing the same shall deem necessary. A complete record of badges issued and refused, and of the facts relating thereto, including the name and address of the parent, guardian, or custodian, the day, year, and month of birth of the minor, the date of issuance and kind of evidence of age accepted, and school grade and name of school attended, shall be kept by the Board of Education. No minor to whom such badge is issued shall give, lend, sell, or otherwise transfer it to any other person, or be engaged in any of the trades or occupations mentioned in § 36-515 without wearing such badge, and such minor shall exhibit the same upon demand to any police or attendance officer, or to any person charged with the duty of enforcing this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 21; 1973 Ed., § 36-221; renumbered as § 18 and amended June 15, 1976, D.C. Law 1-68, § 2(22), 23 DCR 524.)

**Section references.** — This section is referred to in §§ 36-501, 36-519, and 36-520.

**Legislative history of Law 1-68.** — See note to § 36-501.

**§ 36-519. Violation of §§ 36-515 to 36-521; revocation of badge or work permit.**

The Board of Education shall order any minor found to be engaged in any of the trades or occupations mentioned in § 36-515, in violation of any of the provisions of §§ 36-515 through 36-521, to cease and desist from engaging in such trade or occupation, and the parent, guardian, or custodian of such minor shall be notified by the Board of its order. The Board of Education may also revoke the badge or work permit of any minor who violates any provision of this chapter, or who fails to comply with all legal requirements concerning school attendance for such period as the Board may require. Upon revocation, the Board shall so notify the parent, guardian, or custodian of such minor, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge or work permit to the Board. After notice to the minor and the parent, guardian, or custodian of the revocation of such badge or work permit, said minor shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender the badge upon such revocation shall be deemed a violation of this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 22; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(j)(1); 1973 Ed., § 36-222; renumbered as § 19 and amended June 15, 1976, D.C. Law 1-68, § 2(23), 23 DCR 525.)

**Section references.** — This section is referred to in §§ 36-501 and 36-520.

**Legislative history of Law 1-68.** — See note to § 36-501.

**§ 36-520. Persons selling merchandise to minor for resale or distribution to ascertain that minor wears badge; penalties; exception.**

Any person who either personally or as agent of any other person, or of any firm, corporation, or company, furnishes or sells or offers for sale to any minor under 16 any article of any description to be used for the purpose of sale or distribution in any public place shall first ascertain that said minor wears the badge issued by the Board of Education in plain sight as herein provided, and if said minor has no badge, no article shall be furnished or sold to the minor. Any person who fails to comply with the foregoing provision, or who furnishes or sells or offers for sale to any minor any article of any description, with the knowledge that the minor intends to sell or distribute such article in violation of any provision of this chapter, or after having received written notice from any officer charged with the enforcement of this chapter that such minor is selling such article in violation of any provision of said chapter, or any person who procures any minor to violate any provision of this chapter shall for a 1st offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than 10 nor more than 30 days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment for not less than 30 nor more than 90 days, or by both such fine and imprisonment. Whoever, having under control or custody any minor, permits or consents to the violation by such minor of any of the provisions of §§ 36-515 to 36-520 shall for a 1st offense be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment of not less than 5 nor more than 30 days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$10 nor more than \$200, or by imprisonment for not less than 10 nor more than 60 days, or by both such fine and imprisonment. Nothing in this section shall be construed as prohibiting the distribution or circulation, by a minor, of political literature or petitions, or such other materials, for which the minor receives no pecuniary compensation. (May 29, 1928, 45 Stat. 1005, ch. 908, § 23; 1973 Ed., § 36-223; renumbered as § 20 and amended June 15, 1976, D.C. Law 1-68, § 2(24), 23 DCR 526.)

**Section references.** — This section is referred to in §§ 36-501 and 36-519.

**Legislative history of Law 1-68.** — See note to § 36-501.

**§ 36-521. Loitering around business establishments prohibited during school hours; penalty.**

No owner or employee of a business establishment shall permit a minor under the age of 16, having reasonable grounds to believe that such minor is a truant or unlawfully absent from school, to loiter on the premises of such business establishment during those hours when school is in session. Any person violating the provisions of this section may be fined not less than \$25 nor more than \$300, or may be imprisoned for not less than 10 days or longer than 30 days. (May 29, 1928, 45 Stat. 1006, ch. 908, § 24; 1973 Ed., § 36-224;

renumbered as § 21 and amended June 15, 1976, D.C. Law 1-68, § 2(25), 23 DCR 527.)

**Section references.** — This section is referred to in §§ 36-501 and 36-519.

**Legislative history of Law 1-68.** — See note to § 36-501.

**Amendment of regulations.** — Section 2 of D.C. Law 5-88 amended Article 36 of the Police Regulations of the District of Columbia (Com-

missioner's Order No. 301, 904/1, effective Nov. 1, 1948) which provides for the regulation of video arcades and mechanical amusement machines.

**Delegation of authority under D.C. Law 5-88.** — Mayor's Order 85-28, March 11, 1985.

## § 36-522. Severability.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby. (May 29, 1928, 45 Stat. 1006, ch. 908, § 28; 1973 Ed., § 36-226; renumbered as § 24 June 15, 1976, D.C. Law 1-68, § 2(28), 23 DCR 528.)

**Legislative history of Law 1-68.** — See note to § 36-501.

## § 36-523. Board of Education authorized to enforce chapter, make regulations, delegate functions, and appoint inspectors.

The Board of Education of the District of Columbia is hereby empowered to carry out and enforce the provisions of this chapter, and is authorized to promulgate such regulations as may be necessary to effectuate the purposes of this chapter. The Board of Education is further authorized to delegate the performance of any of its functions and duties under this chapter to any officer, agent, or department of the Board, and to appoint such number of child labor inspectors or other employees as may be necessary to carry out the provisions of this chapter. (May 29, 1928, 45 Stat. 1006, ch. 908, § 29; 1973 Ed., § 36-227; renumbered as § 25 and amended June 15, 1976, D.C. Law 1-68, § 2(29), 23 DCR 528.)

**Section references.** — This section is referred to in § 36-513.

**Legislative history of Law 1-68.** — See note to § 36-501.

## § 36-524. Prosecutions.

Prosecutions for violations of any of the provisions of this chapter, or of any regulation made by the Board of Education under authority of this chapter, shall be on information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any assistants. (May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(j)(2); 1973 Ed., § 36-228; renumbered as § 22 and amended June 15, 1976, D.C. Law 1-68, § 2(27), 23 DCR 527.)



**Legislative history of Law 1-68.** — See note to § 36-501.

**Jurisdiction.** — Superior Court does not have exclusive jurisdiction over violations of laws governing employment of minors; § 25-

118 vests the Alcoholic Beverage Control Board with authority to discipline licensees who violate such laws. *Club 99, Inc. v. District of Columbia ABC Bd.*, App. D.C., 457 A.2d 773 (1982).

## CHAPTER 6. EMPLOYMENT OPPORTUNITIES.

Sec.

36-601. Purpose.

36-602. Definitions.

36-603. Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped — Established.

Sec.

36-604. Same — Duties.

36-605. Procurement requirements for District government.

## § 36-601. Purpose.

(a) The purpose of this chapter is to further the policy of the District of Columbia to encourage and assist blind and other severely handicapped individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for blind and other severely handicapped products and services thereby enhancing their dignity and capacity for self-support.

(b) Further, it is the purpose of this chapter to create employment opportunities for blind and other severely handicapped individuals which enhance training, evaluation, adjustment and open market employment for those persons who become sufficiently capable. (1973 Ed., § 36-801; Mar. 3, 1979, D.C. Law 2-128, § 2, 25 DCR 2236.)

**Legislative history of Law 2-128.** — Law 2-128, the “Employment Opportunities Act of 1978,” was introduced in Council and assigned Bill No. 2-151, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on July 11, 1978, and July 25, 1978, respectively. Signed by the Mayor on August 17, 1978, it was assigned Act No. 2-263 and transmitted to both Houses of Congress for its review.

## § 36-602. Definitions.

For the purposes of this chapter:

(1) The term “blind” refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) The term “direct labor” includes all work required for preparation, processing and packing but not supervision, administration, inspection and shipping.

(3) The term “qualified nonprofit agency for the blind and other severely handicapped” means an agency:

(A) Organized under the laws of the United States or of the District of Columbia operated in the interest of blind individuals and other severely handicapped individuals and the net income of which does not ensure, in whole or in part, to the benefit of any shareholder or other individual;

(B) Which complies with any applicable occupational health and safety standard required by the laws of the United States or of the District of Columbia; and

(C) Which in the manufacture of products and in the provision of service (whether or not the products or services are procured under this chapter) during the fiscal year employs blind and other severely handicapped individuals for not less than 75% of the person-hours of direct labor required for the manufacture or provision of the products or services.

(4) The term "severely handicapped" means any person (other than a blind person as heretofore defined) who is so severely incapacitated by any physical or mental disability that he or she cannot engage in normal competitive employment because of such disability. (1973 Ed., § 36-802; Mar. 3, 1979, D.C. Law 2-128, § 3, 25 DCR 2236.)

**Legislative history of Law 2-128.** — See note to § 36-601.

### **§ 36-603. Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped — Established.**

(a) There is hereby created a Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped (hereinafter referred to as the "Committee") to be appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"). The Committee shall be composed of 2 private citizens conversant with the problems incident to the employment of the blind and other severely handicapped, 2 citizens representing individuals who are handicapped consumers employed in qualified nonprofit agencies for the blind and other severely handicapped, 2 citizens representing the general public and a representative of each of the following agencies: Directors of the Department of General Services, the Office of Budget and Management Systems and the Department of Human Services. The members of the Committee shall be appointed by the Mayor for a term of 4 years and shall not serve beyond the expiration of their term: Except, that of the 6 private citizen members first appointed, 2 shall be appointed for a term of 2 years, 2 shall be appointed for a term of 3 years, and 2 shall be appointed for a term of 4 years, as designated by the Mayor at the time of appointment. The members of the Committee shall designate 1 of their number to be chairperson.

(b) Any private citizen member, appointed under subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed, shall be appointed only for the remainder of such term.

(c) Members of the Committee shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Committee.

(d) Subject to such rules as may be adopted by the Committee, the Mayor may appoint and fix the pay of any personnel which the Commission determines is necessary to assist it in carrying out its duties and powers under this chapter.

(e) The Committee may secure directly from any agency of the District of Columbia government (hereinafter referred to as "District government") infor-



mation which the Committee deems necessary to carry out this chapter. Upon request of the chairperson of the Committee, the head of such agency shall furnish such information to the Committee.

(f) The Committee shall, not later than 90 days following the close of each fiscal year, transmit to the Mayor and to the Council of the District of Columbia (hereinafter referred to as the "Council") a report which shall include:

(1) The names of the Committee members serving in the preceding fiscal year;

(2) The dates of Committee meetings in that year;

(3) A description of its activities under this chapter in that year;

(4) A list of contracts awarded under this chapter and the recipients thereof; and

(5) Any recommendations for changes in this chapter which it determines are necessary. (1973 Ed., § 36-803; Mar. 3, 1979, D.C. Law 2-128, § 4, 25 DCR 2236.)

**Section references.** — This section is referred to in § 1-1462.

**Legislative history of Law 2-128.** — See note to § 36-601.

**Transfer of functions.** — The Department of Human Resources was replaced by the Department of Human Services, pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

## § 36-604. Same — Duties.

(a) The duties of the Committee shall be as follows:

(1) To determine the price of all products manufactured and services provided by the blind and other severely handicapped and offered for sale to the various agencies of the District government by any qualified nonprofit agency for the blind and other severely handicapped. The price shall be set to recover the cost of raw materials for the workshops, labor, overhead and delivery costs, but shall not include profit;

(2) To revise such prices from time to time in accordance with changing cost factors; and

(3) To make such rules and regulations regarding specifications, time of delivery, authorization of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind and other severely handicapped and other relevant matters of procedure as shall be necessary to carry out the purposes of this chapter.

(b) The Committee shall establish and publish a list of products produced by any qualified nonprofit agency for the blind and other severely handicapped and the services provided by any such agency which the Committee determines are suitable for procurement by agencies of the District government pursuant to this chapter. This procurement list and revisions thereof shall be distributed to all purchasing officers of the District government. (1973 Ed., § 36-804; Mar. 3, 1979, D.C. Law 2-128, § 5, 25 DCR 2236.)

**Legislative history of Law 2-128.** — See note to § 36-601.

**§ 36-605. Procurement requirements for District government.**

(a) If any agency of the District government intends to procure any product or service on the procurement list, that agency shall, in accordance with rules and regulations not contrary to the procurement laws and rules and regulations of the District of Columbia and of the Committee, procure such product or service, at the price established by the Committee, from a qualified nonprofit agency for the blind and other severely handicapped if the product or service is available within the period required by that agency and if the product meets the minimum quality standards required by the agency; provided, that this chapter shall not apply in any cases where products or services are available for procurement from any agency of the District government and procurement therefrom is required under the provisions of any law in effect on the date of enactment of this chapter. These procurement actions shall not abrogate any existing contractual agreements for goods or services but shall only apply after the termination of existing contractual agreements.

(b) In furthering the purposes of this chapter and in contributing to the economy of the District government, it is the intent of the Council that there be close cooperation between the Committee and any agency of the District government from which procurement of products or services is required under the provisions of any law in effect on the date of enactment of this chapter. The Committee and any such agency of the District government are authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this chapter and any other law requiring procurement of products or services from any agency of the District government. (1973 Ed., § 36-805; Mar. 3, 1979, D.C. Law 2-128, § 6, 25 DCR 2236.)

**Legislative history of Law 2-128.** — See note to § 36-601.

## CHAPTER 7. PUBLIC EMPLOYMENT SERVICE.

Sec.

36-701. Transfer of functions to Mayor; authorization to establish service.

Sec.

36-702. Programs for employment and training of young District domiciliaries.

**§ 36-701. Transfer of functions to Mayor; authorization to establish service.**

(a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under § 3 of the Act (29 U.S.C. § 49b) entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (29 U.S.C. §§ 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Mayor. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the states) generally.

(b) The Mayor is authorized and directed to establish and administer a public employment service in the District and to that end he shall have all necessary powers to cooperate with the Secretary in the same manner as a state under the Act of June 6, 1933, specified in subsection (a) of this section. (1973 Ed., § 36-701; Dec. 24, 1973, 87 Stat. 783, Pub. L. 93-198, title II, § 204(a), (b).)

**Cross references.** — As to first source employment, see § 1-1161 et seq.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the

District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Definitions applicable.** — The definitions in § 1-202 apply to this section.

**Cited in** Thomas v. Barry, 729 F.2d 1469 (D.C. Cir. 1984).

**§ 36-702. Programs for employment and training of young District domiciliaries.**

(a) The Mayor shall establish and implement programs, subject to the annual appropriation of funds, for the employment and training of young persons who are domiciliaries of the District of Columbia, as follows:

(1) *Summer youth jobs.* — A summer youth jobs program to provide for the employment each summer of youths between the ages of 14 and 21 on the date of enrollment in the program, at a rate equal to the federal minimum wage as established by § 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206). The weekly number of hours of such employment shall be established according to the age of the youth to be employed and the nature and requirements of



the job, but shall not be less than 20 nor more than 40 hours per week. Employment under this program may include an appropriate number of supervisory positions at a wage not to exceed the federal minimum wage by more than 12%.

(2) *In school jobs.* — An in school jobs program to provide for the employment throughout the school year of students aged 14 through 21 years on a part-time basis at the federal minimum wage. Priority shall be given to students who may drop out of school to seek work because they are economically disadvantaged.

(3) *Out of school year-round employment.* — An out of school year-round employment program to provide for the employment of youth 16 through 24 years of age at the prevailing entry-level wage for the job being performed, not to exceed \$3.25 per hour during fiscal years 1979 and 1980, and thereafter not to exceed a wage 12% greater than the federal minimum wage. Priority for employment under this program shall be given to economically disadvantaged youth with special consideration given to public housing residents. The program shall have special safeguards to assure that the prospect of employment under this section does not induce students to drop out of school.

(4) *On-the-job training program for adults.* — An on-the-job training program for adults at least 18 years of age who are District of Columbia residents and unemployed. Priority for participation in the program shall be given to economically disadvantaged adults with dependents, with special consideration given to public housing residents. The District of Columbia government shall reimburse participating employers  $\frac{1}{2}$  of the prevailing wage paid for an occupation, as determined by the Mayor, for a period not to exceed 12 months. The employer shall pay all wages in excess of the allowable reimbursement and all fringe benefits. The Mayor shall require that participating private sector employers agree to hire persons who successfully complete the program. Nothing in this section shall prohibit the participation of the Council of the District of Columbia in the on-the-job training program for adults.

(5) *Training and retraining for employment.* — A program for preemployment training and retraining for persons 16 years of age and above, who are domiciliaries of the District of Columbia. Allowances may be paid to the participants in the program. Priority should be given to persons who are economically disadvantaged. Training programs pursuant to this paragraph may be coupled with those conducted under paragraphs (3) and (4) of this subsection.

(b) Employment under the programs established pursuant to subsection (a) of this section may be provided directly with the government of the District of Columbia or with the private sector on a fully funded, partially or match-funded basis through grants to or by contract with nonprofit or profit-making organizations, associations, institutions or businesses.

(c) The programs established pursuant to subsection (a) of this section may include, but shall not be limited to, the following supportive services and activities: transportation; orientation; counseling and training; supplies and equipment; and program promotion.

(d) For the purpose of this section, the term “economically disadvantaged” means a person who is either:

- (1) A member of a family which receives public assistance;
- (2) A member of a family whose income during the previous 6 months on an annualized basis was such that:
  - (A) The family would have qualified for public assistance, if it had applied for such assistance;
  - (B) It does not exceed the poverty level; or
  - (C) It does not exceed 70% of the lower living standard income level;
- (3) A foster child on whose behalf state or local government payments are made; or
- (4) Where the status presents significant barriers to employment:
  - (A) A client of a sheltered workshop;
  - (B) A handicapped individual;
  - (C) A person residing in an institution or facility providing 24-hour support, such as a prison, a hospital or community care facility; or
  - (D) A regular outpatient of a mental hospital rehabilitation facility or similar institution.

(e) An employer required by law to pay a minimum wage higher than that specified in this section shall pay such higher wage to persons employed pursuant to this section.

(f) The Mayor of the District of Columbia shall issue regulations to implement this section. The rules and regulations issued by the Mayor for the purpose of implementing the provisions of this section shall be submitted by the Mayor to the Council of the District of Columbia for a 45 calendar-day review period, excluding days of Council recess. No such rules or regulations shall take effect until the end of the 45 calendar-day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council, and then only if during such period the Council does not adopt a resolution disapproving such rules and regulations in whole or in part. (Jan. 5, 1980, D.C. Law 3-46, § 2, 26 DCR 2310; July 2, 1982, D.C. Law 4-124, § 2, 29 DCR 2091; Mar. 10, 1983, D.C. Law 4-193, § 2, 30 DCR 43; Feb. 28, 1987, D.C. Law 6-211, § 2, 34 DCR 847; May 10, 1989, D.C. Law 7-231, § 45, 36 DCR 492.)

**Legislative history of Law 3-46.** — Law 3-46, the “Youth Employment Act of 1979,” was introduced in Council and assigned Bill No. 3-138, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1979, and October 23, 1979, respectively. Signed by the Mayor on November 9, 1979, it was assigned Act No. 3-124 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-124.** — Law 4-124, the “Youth Employment Act of 1979 Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-401, which was referred to the Committee on Housing and Economic Affairs. The Bill was adopted on first

and second readings on April 6, 1982, and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-189 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-193.** — Law 4-193, the “Youth Employment Act of 1979 Amendments /Job Skills and Placement Programs for Public Housing Residents Act of 1982,” was introduced in Council and assigned Bill No. 4-331, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No.

4-277 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-211.** — Law 6-211, the “Employment Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-111, which was referred to the Committee on Housing and Economic Development. The bill was adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-271 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-231.** — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

**Authorization of funds for contract with D.C. Street Academy.** — Section 3 of D.C. Law 4-124 provided that during the fiscal year ending September 30, 1983, the expenditure of funds is authorized for a direct contract with the D.C. Street Academy, a nonprofit, certified, and accredited secondary school specifically designed and established to serve the target population identified in § 36-702(a)(5).

**Cited** in *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).



## CHAPTER 8. LIE DETECTORS.

Sec.

36-801. Definitions.

36-802. Use prohibited; exceptions.

36-803. Invasion of privacy; contracts and ar-

bitration decisions; criminal penalties and civil liability.

### § 36-801. Definitions.

As used in this chapter, the term:

(1) "Employee" means any natural person who performs any labor for compensation, in whole or in part, in the District of Columbia; but does not include:

(A) Employees of any authority of the government of the United States other than the District of Columbia government;

(B) Employees of any foreign government; or

(C) Employees of any international organization defined in 22 U.S.C. § 288.

(2) "Employer" means anyone who employs any natural person and who does business in the District of Columbia, but does not include any agency or authority of the federal government.

(3) "Hiring procedure" means any procedure or action in the District of Columbia used to find, or to select for employment, any person seeking employment, whether the procedure is used by a prospective employer with all persons seeking employment, or is used only selectively with such persons.

(4) "Lie detector test" means any polygraph, lie detector, or other test which by any mechanical, electrical, chemical, or physiological means attempts to determine whether a person is telling the truth, or the truth to the best of the person's knowledge. (1973 Ed., § 36-901; Mar. 6, 1979, D.C. Law 2-154, § 2, 25 DCR 6980.)

**Legislative history of Law 2-154.** — Law 2-154, the "Prevention of the Administration of Lie Detection Procedures Act of 1978," was introduced in Council and assigned Bill No. 2-225, which was referred to the Committee on Public Services and Consumer Affairs. The Bill

was adopted on first and second readings on November 28, 1978, and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-320 and transmitted to both Houses of Congress for its review.

### § 36-802. Use prohibited; exceptions.

(a) No employer or prospective employer shall administer, accept or use the results of any lie detector test in connection with the employment, application or consideration of an individual, or have administered, inside the District of Columbia, any lie detector test to any employee, or, in or during any hiring procedure, to any person whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the District of Columbia.

(b) The provisions of this section shall not apply to any criminal or internal disciplinary investigation, or pre-employment investigation conducted by the Metropolitan Police, the Fire Department, and the Department of Corrections; provided that any information received from a lie detector test which renders

an applicant ineligible for employment shall be verified through other information and no person may be denied employment based solely on the results of a pre-employment lie detector test. (1973 Ed., § 36-902; Mar. 6, 1979, D.C. Law 2-154, § 3, 25 DCR 6980; Sept. 22, 1994, D.C. Law 10-175, § 2, 41 DCR 5173; Mar. 16, 1995, D.C. Law 10-215, § 2, 41 DCR 8036.)

**Section references.** — This section is referred to in § 36-803.

**Effect of amendments.** — D.C. Law 10-215 rewrote (b).

**Legislative history of Law 2-154.** — See note to § 36-801.

**Legislative history of Law 10-175.** — Law 10-175, the “Lie Detector Tests for Pre-Employment Investigations Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-702. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-295 and transmitted to both Houses of Con-

gress for its review. D.C. Law 10-175 became effective on September 22, 1994.

**Legislative history of Law 10-215.** — Law 10-215, the “Lie Detector Tests for Pre-Employment Investigations Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-693, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1995, it was assigned Act No. 10-352 and transmitted to both Houses of Congress for its review. D.C. Law 10-215 became effective on March 16, 1995.

## § 36-803. Invasion of privacy; contracts and arbitration decisions; criminal penalties and civil liability.

(a) Any administration of a lie detector test to any employee or person seeking employment, in violation of § 36-802, shall be an unwarranted invasion of privacy in the District of Columbia, and shall be compensable by damages for tortious injury.

(b) No contract or arbitration decision shall contain any provision in violation of § 36-802.

(c) Any employer who violates the provisions of § 36-802 shall be guilty of a misdemeanor and subject to a fine of \$500, or 30 days in jail, or both, upon conviction.

(d) Any employer who violates the provisions of this chapter shall be civilly liable to the person whom he or she required to take a polygraph or similar examination, and the amount of damages shall be established by the court, plus reasonable attorney’s fees. Remedies available under subsection (c) of this section and this subsection shall be deemed alternative or joint relief, and not subject to waiver by the exercise of the other. (1973 Ed., § 36-903; Mar. 6, 1979, D.C. Law 2-154, § 4, 25 DCR 6980.)

**Legislative history of Law 2-154.** — See note to § 36-801.

## CHAPTER 9. MISCELLANEOUS PROVISIONS.

Sec.

36-901. Employers to furnish seats for employees.

36-902. Penalty.

**§ 36-901. Employers to furnish seats for employees.**

All employers of persons in stores, shops, offices, or manufactories as clerks, assistants, operatives, or helpers in any business, trade, or occupation carried on or operated by them in the District of Columbia shall be required to procure and provide proper and suitable seats for all such employees and shall permit the use of such seats, rests, or stools, as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such stools or seats when any such employees are not actively employed in their work in such business or employment. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 1; 1973 Ed., § 36-310; Oct. 1, 1976, D.C. Law 1-87, § 37(a), 23 DCR 2544.)

**Section references.** — This section is referred to in § 36-902.

**Legislative history of Law 1-87.** — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Com-

mittee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

**§ 36-902. Penalty.**

If any employer in the District of Columbia shall neglect or refuse to provide seats, as provided in § 36-901 and this section, or shall make any rules, orders, or regulations in his shop, store, or other place of business, requiring employees to remain standing when not necessarily employed in service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed \$25, with costs, in the discretion of the court. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 2; 1973 Ed., § 36-311; Oct. 1, 1976, D.C. Law 1-87, § 38, 23 DCR 2544.)

**Legislative history of Law 1-87.** — See note to § 36-901.



CHAPTER 10. EMPLOYMENT SERVICES LICENSING AND REGULATION.

Sec.

36-1001. Definitions.

36-1002. Licensing requirements for employment agencies, employment counseling services, employer-paid personnel services, job listing services, and employment counselors.

36-1003. Bonding requirements.

36-1004. Requirements for operation of employment agencies.

36-1005. Requirements for operation of employment counseling services.

36-1006. Requirements for operation of employer-paid personnel services.

Sec.

36-1007. Requirements for operation of job listing services.

36-1008. Discrimination prohibited.

36-1009. Protection of privacy.

36-1010. Investigations.

36-1011. Powers of Mayor as to witnesses.

36-1012. Cease and desist orders.

36-1013. Mediation or arbitration of disputes.

36-1014. Penalties.

36-1015. Rules and regulations; delegation of authority.

36-1016. Exemptions.

§ 36-1001. Definitions.

For the purposes of this chapter the term:

(1) "District" means the District of Columbia.

(2) "Employer" means any individual or business which employs 1 or more individuals and which receives or seeks to receive the services of an employment agency or employer-paid personnel service for the purpose of obtaining employees or advice concerning employees.

(3) "Employer-paid personnel service" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, procures, offers, or attempts to procure job-seekers for employers, or provides employment advice or counseling to employers or to other persons designated by employers, and who is compensated solely by employers and does not in any way hold any job-seeker liable for fees. Except for the purposes of §§ 36-1002(a), 36-1006(e)(6), 36-1008, and 36-1014(a), the term "employer-paid personnel service" shall not mean an executive search firm which is paid solely by employers and which acts as a consultant to employers to identify, appraise, or recommend individuals for executive, managerial, or professional positions, and shall not mean an outplacement consulting firm which is paid solely by employers to provide employment advice to employees.

(4) "Employment agency" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, procures, offers, or attempts to procure job-seekers for employers or employment for job-seekers, and whose fees are charged in whole or in part to the job-seekers contracting for those services.

(5) "Employment counseling service" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, provides, offers, or implies the offer of counseling, evaluating, testing, marketing, or advising job-seekers concerning career decisions, or the procurement of employment; who does not directly procure or attempt to procure employment for job-seekers; and whose fees are charged in whole or in part to the job-seekers contracting for those services.

(6) "Employment counselor" means any placement manager, placement director, counselor, interviewer, or any other person employed by an employ-

ment agency, employment counseling service, or employer-paid personnel service who interviews, counsels, or advises job-seekers seeking or receiving the services of the employment agency, employment counseling service, or employer-paid personnel service. The term "employment counselor" shall not include employees of an employment agency, employment counseling service, or employer-paid personnel service who are primarily engaged in interviewing, counseling, or advising employers, or in research, management, or clerical operations.

(7) "Fee" means money or other valuable consideration required or received by an employment agency, employment counseling service, employer-paid personnel service, or job listing service in payment for its services.

(8) "Job listing service" means any individual, partnership, association, corporation, contractor, or subcontractor in the District who, for a fee, provides to any purchaser a list of job openings, and who does not provide, offer, or imply the offer of any service related to employment, employment counseling, or the procurement of employment.

(9) "Job-seeker" means any individual who receives or seeks to receive the services of an employment agency, employment counseling service, or employer-paid personnel service for the purpose of obtaining or considering new employment.

(10) "Mayor" means the Mayor of the District of Columbia. (Mar. 13, 1985, D.C. Law 5-136, § 2, 31 DCR 5727.)

**Legislative history of Law 5-136.** — Law 5-136, the "Employment Services Licensing and Regulation Act of 1984," was introduced in Council and assigned Bill No. 5-280, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 12, 1984, and October 9, 1984, respectively. Signed

by the Mayor on October 25, 1984, it was assigned Act No. 5-194 and transmitted to both Houses of Congress for its review.

**Applicability.** — Legal recruiting and consulting firm's act of facilitating the merger of two law firms fell outside the licensing authority of § 36-1002(a)(1). *A-L Assocs. v. Jorden*, 963 F.2d 1529 (D.C. Cir. 1992).

## **§ 36-1002. Licensing requirements for employment agencies, employment counseling services, employer-paid personnel services, job listing services, and employment counselors.**

(a)(1) No individual, partnership, association, corporation, contractor, or subcontractor shall operate an employment agency, employment counseling service, employer-paid personnel service, or job listing service in the District without first obtaining a license for that purpose from the Mayor.

(2) All licenses to operate an employment agency, employment counseling service, employer-paid personnel service, or job listing service shall be issued for 1 year and may be renewed.

(3) Each applicant for a license shall file with the Mayor a completed application on a form prescribed and furnished by the Mayor. The application shall be signed by the applicant and shall be notarized.

(A) The application shall list the addresses of all of the applicant's offices in the District and shall identify the person who is to manage the day-to-day operations of each office.

(B) If the applicant is a corporation, the application shall state the names and home addresses of all the officers and directors of the corporation and shall be signed and sworn to by the president, treasurer, and secretary of the corporation.

(C) If the applicant is a partnership, the application shall state the names and home addresses of all partners and shall be signed and sworn to by all of them.

(D) The application shall identify the business experience of the applicant for the 10 years preceding the date of the application. If the applicant is a corporation or a partnership, the application shall identify the business experience for the preceding 10 years of each partner in the partnership or of the president, treasurer, and secretary of the corporation.

(4) Each applicant for a license as an employment agency or employment counseling service shall file with the application 3 copies of its contract for services to job-seekers. The Mayor shall not issue a license until he is satisfied that the contract complies with this chapter and with rules and regulations issued pursuant to this chapter.

(5) Prior to receiving a license, each applicant approved for a license shall pay an annual license fee of \$500.

(6) Upon receiving an application for a license, the Mayor shall investigate the business integrity and financial standing of the applicant.

(7) The application shall be rejected if the Mayor finds specific and articulable facts showing that the applicant, any officer or director of an applicant corporation, or any partner of an applicant partnership:

(A) Has a record of failing to meet significant financial obligations;

(B) Has been convicted of any federal, state, District, or municipal offense involving fraud or deceptive business practices in the 10 years preceding the date of the application;

(C) Has engaged in fraud, deceit, or misrepresentation of any material fact in attempting to procure any license under this chapter; or

(D) Was or is an owner, partner, or corporate officer of any business whose license was revoked or that was otherwise caused to cease operations by action of any state or federal agency or court because of violations of law or regulations relating to deceptive or unfair practices in the conduct of business.

(8) To apply for renewal of a license, a licensee shall, on or before the 30th day prior to the date of expiration of the license, submit an application to the Mayor on a form prescribed and furnished by the Mayor and pay the annual license fee. The Mayor shall renew the license after determining that the licensee complies with the provisions of this chapter, rules and regulations issued pursuant to this chapter, and other applicable laws, rules, and regulations of the District.

(b)(1) No individual may perform the duties of an employment counselor without first obtaining a license for that purpose from the Mayor.

(2) An applicant for an employment counselor's license shall file a completed and notarized application with the Mayor on a form prescribed and



furnished by the Mayor, pay an application fee in the amount established by the Mayor, and pass an examination established by the Mayor to test the applicant's knowledge of basic employment counseling skills and the laws, rules, and regulations applicable to employment counseling in the District.

(3) The Mayor shall administer the examination to each applicant no later than 10 days after receiving the application, and shall notify the applicant of the results of the examination no later than 5 days after the applicant takes the examination.

(4) The Mayor may reject any application if he finds that the applicant:

(A) Has engaged in any practice prohibited by § 36-1004(o);

(B) Has engaged in fraud, deceit, or misrepresentation of any material fact in attempting to procure any license under this chapter; or

(C) Has had a license to practice employment counseling or other business revoked or was otherwise caused to cease operations by action of any state or federal agency or court because of violation of laws or regulations relating to deceptive or unfair practices in the conduct of business.

(5) All employment counselor licenses shall state the name and location of the employment agency, employment counseling service, or employer-paid personnel service by which the employment counselor is employed.

(6) All employment counselor licenses shall remain in effect as long as the licensee continues to be employed with the employment agency, employment counseling service, or employer-paid personnel service stated on the license, and complies with the provisions of this chapter and rules and regulations issued pursuant to this chapter.

(7) The employment counselor and the employment agency, employment counseling service, or employer-paid personnel service shall notify the Mayor within 5 days after termination of the employment counselor's employment. The employment counselor may apply for license renewal upon obtaining employment with another employment agency, employment counseling service, or employer-paid personnel service.

(c)(1) The Mayor shall approve or reject applications for licensure as an employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor within 60 days from the date the application is received by the Mayor.

(2) The Mayor may issue a 45-day provisional license to an applicant for licensure as an employment counselor who has complied with all requirements of subsection (b)(2) of this section and who has not had an employment counselor's license suspended or revoked by the Mayor.

(3) Any applicant who is aggrieved by the rejection of an application by the Mayor shall have the right to a hearing before the Mayor pursuant to § 1-1509, which hearing shall be conducted within 10 days following the aggrieved party's formal request for the hearing.

(d) Each employment agency, employment counseling service, employer-paid personnel service, job listing service, and employment counselor licensed pursuant to this chapter shall post the license in a prominent place visible to clients in each place of business maintained by the licensee. (Mar. 13, 1985, D.C. Law 5-136, § 3, 31 DCR 5727.)

**Section references.** — This section is referred to in § 36-1001.

**Legislative history of Law 5-136.** — See note to § 36-1001.

**Applicability.** — Legal recruiting and con-

sulting firm's act of facilitating the merger of two law firms fell outside the licensing authority of subsection (a)(1). *A-L Assocs. v. Jorden*, 963 F.2d 1529 (D.C. Cir. 1992).

## § 36-1003. Bonding requirements.

(a) Every applicant for a license to operate an employment agency, employment counseling service, or job listing service, prior to receiving a license, shall file with the Mayor a bond signed by the applicant as principal and by a surety company authorized to do business in the District as a surety.

(b)(1) Any employment agency or employment counseling service whose average fee for job-seekers is \$2,000 or more and which enters into contracts with 100 or more job-seekers per year shall file a bond in the amount of \$100,000.

(2) Any employment agency or employment counseling service whose average fee for job-seekers is less than \$2,000 or which enters into contracts with fewer than 100 job-seekers per year shall file a bond in the amount of \$50,000.

(3) Each job listing service shall file a bond in the amount of \$5,000.

(c) Each bond shall be in favor of the District for the benefit of any job-seeker injured by the employment agency or employment counseling service or any purchaser of job lists from the job listing service when the job-seeker or purchaser is unable to recover directly from the licensee for the injury. The liability of the surety under any bond may not exceed the amount of the bond, regardless of the number or amount of claims filed. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Mayor for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(d) Upon commencement of any action or actions against the surety based upon the bond for an aggregate amount exceeding the amount of the bond, the Mayor may require the licensee to obtain an additional bond in an amount to be determined by the Mayor. The licensee's failure to file the new and additional bond within 30 days from the date of the Mayor's requirement shall constitute cause for revocation of the license.

(e) Each applicant for renewal of a license to operate an employment agency, employment counseling service, or job listing service, prior to receiving the license renewal, shall file with the Mayor evidence that the bond required by this section remains in force.

(f) The Mayor may accept an irrevocable letter of credit from a financial institution authorized to do business in the District, or evidence of cash deposited in an escrow account in a financial institution in the District in the name of the licensee and the District in lieu of the bond required by this section. The letter of credit or escrow account shall be in the amounts required by subsection (b) of this section. (Mar. 13, 1985, D.C. Law 5-136, § 4, 31 DCR 5727.)

**Legislative history of Law 5-136.** — See note to § 36-1001.

### **§ 36-1004. Requirements for operation of employment agencies.**

(a) Each employment agency shall maintain a file of all its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the employment agency is licensed to do business.

(b) Any employment agency which uses any statistics regarding its placement rate, success rate, or other similar statistics in its advertising, promotional materials, or oral or written statements to job-seekers shall maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each employment agency shall keep detailed records of the following information on forms approved by the Mayor:

(1) The names, home addresses, and telephone numbers of all job-seekers contracting with the employment agency;

(2) A log of all activities performed by the employment agency for the benefit of each job-seeker contracting with the employment agency, including, but not limited to, the dates of job interviews arranged by the employment agency for each job-seeker and the identity of the employer with whom each interview was arranged;

(3) Copies of each contract between the employment agency and each job-seeker;

(4) The name of each employer placing a job order with the employment agency, a description of each job order, and the identity of each job-seeker referred to the employer for each job order;

(5) The identity of each employer and job-seeker for each job placement resulting from the activities performed by the employment agency and a description of the job in which the job-seeker was placed; and

(6) Any other information determined by the Mayor to be necessary to accomplish the purposes of this chapter.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record was made.

(e) Each employment agency shall file with the Mayor a schedule of fees to be charged to job-seekers. These fees may be changed by filing an amended schedule showing the changes at least 30 days before the changes are to take effect. It shall be unlawful to charge, demand, or receive a fee greater than is specified in the most recent schedule filed with the Mayor.

(f)(1) Prior to performing any service for a job-seeker, an employment agency shall enter into a written contract with the job-seeker.

(2) The contract required by this subsection shall be written in simple, easily understandable language.

(3) The contract shall set forth the specific services to be provided, the fee charged by the employment agency for each service, the total fee for all services to be provided by the employment agency, the period of time during which the services are to be provided, and the schedule for payment of fees.



(4) The employment agency shall provide a copy of the contract to the job-seeker at the time the contract is signed by the job-seeker.

(5) The job-seeker shall have the right to cancel any contract with an employment agency by providing written notification to the employment agency within 3 days from the date of signing the contract.

(6) Each contract between an employment agency and a job-seeker shall contain the following notice in type which is more prominent than the type used for the remainder of the contract:

#### NOTICE

YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON WITHIN 3 DAYS FROM THE DATE OF SIGNING. IF YOU CHOOSE TO CANCEL THIS CONTRACT, YOU MUST PROVIDE (name of employment agency) WRITTEN NOTIFICATION OF YOUR CANCELLATION WITHIN 3 DAYS.

IF YOU FEEL THAT YOU HAVE BEEN THE VICTIM OF AN UNLAWFUL TRADE PRACTICE RELATED TO THIS CONTRACT, YOU HAVE THE RIGHT TO FILE A COMPLAINT WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS OF THE DISTRICT OF COLUMBIA.

(g) No employment agency shall charge any job-seeker a registration fee or collect from any job-seeker any payment for any service in advance of performing the service.

(h) No employment agency shall charge, demand, or receive any fee from a job-seeker unless the employment agency has made an appointment for the job-seeker for a job interview with an employer.

(i) Any attempt by any employment agency or its representative to collect a fee from a job-seeker who has accepted a job with an employer with which the employment agency did not make an appointment for the job-seeker shall be considered fraud and grounds for suspension of the employment agency's license. Any job-seeker aggrieved by this improper attempt to collect a fee may file a complaint with and request a hearing by the Mayor.

(j)(1) No employment agency, as a condition of providing service to a job-seeker, shall require the job-seeker to execute any document prior to acceptance of a job which may constitute a promissory note or authorization to confess judgment.

(2) Any promissory note executed by a person in consideration of an employment agency finding that person employment shall not be held in due course for a period of 120 days after the commencement of employment even though the holder during that period meets all the requirements set forth in § 28:3-302.

(k) Employment shall not be considered permanent when, within 12 weeks after employment commences, that employment is terminated by the employer through no fault of the job-seeker, or is terminated by the job-seeker if the employment is not as represented to the job-seeker. In that event, the employment agency making the job placement shall refund to the job-seeker the portion of the placement fee that exceeds  $\frac{1}{12}$  of that fee for each week or portion thereof that the employment continued.

(l) In the event the job-seeker is discharged for cause or voluntarily leaves employment without just cause within 12 weeks after employment commences, the employment agency making the job placement may charge the job-seeker a fee not to exceed 75% of the permanent placement fee.

(m) If an employer agrees to pay an employment agency fee, but through no fault of the job-seeker does not, the employment agency shall have a right of action against the employer, but not against the job-seeker.

(n) Each employment agency shall give to every job-seeker a numbered receipt for each payment received by the employment agency from the job-seeker. Each receipt shall have printed or written on it the name of the job-seeker, the date and amount of the payment, the name and address of the employment agency, the purpose for which the payment was made, and the legible signature of the person receiving the payment.

(o) No employment agency doing business in the District, or any person employed by or acting as an agent of that employment agency, shall:

(1) Knowingly make referral to any job for which the requirements, duties, or conditions violate federal or District law;

(2) Knowingly refer any job-seeker to any establishment at which a labor dispute is in progress without informing the job-seeker of the existence of the labor dispute;

(3) Refer any job-seeker to any employer for a job that the employment agency does not know to be open, unless the employer specifically requests to see the particular job-seeker;

(4) Refer any job-seeker to an employer without making an appointment for the job-seeker with the employer;

(5) Refer any job-seeker to any employer for a position for which the employment agency knows the job-seeker is not qualified;

(6) Advertise a job opening unless the employment agency has a bona fide employer order for a job-seeker for that job opening;

(7) Solicit, persuade, or induce any job-seeker to leave any job in which the employment agency placed the job-seeker;

(8) Solicit, persuade, or induce any employer to discharge any job-seeker;

(9) Offer, divide, or share, directly or indirectly, any fee, charge, or compensation received or to be received from any job-seeker with any employer or person in any way connected with the employer's business;

(10) Place or attempt to place any person under the age of 18 in any employment where the employment would violate any compulsory education or child labor laws;

(11) Enter into any contract with any person under 18 years of age who is not an emancipated minor unless that person's parent or guardian co-signs the contract; or

(12) Violate any provision of Chapter 39 of Title 28. (Mar. 13, 1985, D.C. Law 5-136, § 5, 31 DCR 5727.)

**Section references.** — This section is referred to in §§ 28-3904 and 36-1002.

**Legislative history of Law 5-136.** — See note to § 36-1001.

**§ 36-1005. Requirements for operation of employment counseling services.**

(a) Each employment counseling service shall maintain a file of all of its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the employment counseling service is licensed to do business, and shall carry a notice stating that the employment counseling service is not an employment agency, does not arrange job interviews, and does not provide job placement services.

(b) Any employment counseling service which uses any statistics regarding its success rate or other similar statistics in its advertising, promotional materials, or oral or written statements to job-seekers shall maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each employment counseling service shall keep detailed records of the following information on forms approved by the Mayor:

(1) The names, home addresses, and telephone numbers of all job-seekers contracting with the employment counseling service;

(2) A log of all activities performed by the employment counseling service for the benefit of each job-seeker;

(3) Copies of each contract between the employment counseling service and job-seekers; and

(4) Any other information determined by the Mayor to be necessary to accomplish the purposes of this chapter.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record was made.

(e) Each employment counseling service shall file with the Mayor a schedule of fees to be charged to job-seekers. These fees may be changed by filing an amended schedule showing the changes at least 30 days before the changes are to take effect. It shall be unlawful to charge, demand, or receive a fee greater than is specified in the most recent schedule filed with the Mayor.

(f)(1) Prior to performing any service for a job-seeker, an employment counseling service shall enter into a written contract with the job-seeker.

(2) The contract required by this subsection shall be written in simple, easily understandable language.

(3) The contract shall set forth the specific services to be provided, the fee charged by the employment counseling service for each service, the total fee for all services to be provided by the employment counseling service, the period of time during which the services are to be provided, and the schedule for payment of fees.

(4) The employment counseling service shall provide a copy of the contract to the job-seeker at the time the contract is signed by the job-seeker.

(5) The job-seeker shall have the right to cancel any contract with an employment counseling service by providing written notification to the employment counseling service within 3 days from the date of signing the contract.

(6) Each contract between an employment counseling service and a job-seeker shall contain the following notice in type which is more prominent than the type used for the remainder of the contract:



## NOTICE

YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON WITHIN 3 DAYS FROM THE DATE OF SIGNING. IF YOU CHOOSE TO CANCEL THIS CONTRACT, YOU MUST PROVIDE (name of employment counseling service) WRITTEN NOTIFICATION OF YOUR CANCELLATION WITHIN 3 DAYS.

IF YOU FEEL THAT YOU HAVE BEEN THE VICTIM OF AN UNLAWFUL TRADE PRACTICE RELATED TO THIS CONTRACT, YOU HAVE THE RIGHT TO FILE A COMPLAINT WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS OF THE DISTRICT OF COLUMBIA.

(g) No employment counseling service shall charge any job-seeker a registration fee or collect from any job-seeker any payment for any service in advance of performing the service.

(h) Each employment counseling service shall give to every job-seeker a numbered receipt for each payment received by the employment counseling service from the job-seeker. Each receipt shall have printed or written on it the name of the job-seeker, the date and amount of the payment, the name and address of the employment agency, the purpose for which the payment was made, and the legible signature of the person receiving payment.

(i) No employment counseling service doing business in the District or any person employed by or acting as an agent of that employment counseling service shall:

(1) Charge any job-seeker any fee based on the job-seeker's desired income;

(2) State, imply, or in any way lead job-seekers to believe that the employment counseling service makes appointments with employers for job interviews for job-seekers or secures employment for job-seekers;

(3) Enter into any contract with any person under 18 years of age, who is not an emancipated minor, unless that person's parent or guardian co-signs the contract; or

(4) Violate any provision of Chapter 39 of Title 28. (Mar. 13, 1985, D.C. Law 5-136, § 6, 31 DCR 5727.)

**Section references.** — This section is referred to in § 28-3904.

**Legislative history of Law 5-136.** — See note to § 36-1001.

## **§ 36-1006. Requirements for operation of employer-paid personnel services.**

(a) Each employer-paid personnel service shall maintain a file of all of its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the employer-paid personnel service is licensed to do business.

(b) Any employer-paid personnel service which uses any statistics regarding its placement rate, success rate, or other similar statistics in its advertising, promotional materials, or oral or written statements to job-seekers shall

maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each employer-paid personnel service shall keep detailed records of the following information on forms approved by the Mayor:

(1) The names, home addresses, and telephone numbers of all job-seekers interviewed by the employer-paid personnel service;

(2) The name of each employer placing a job order with the employer-paid personnel service, a description of each job order, and the identity of each job-seeker referred to the employer for each job order;

(3) The identity of each employer and job-seeker for each job placement resulting from the activities performed by the employer-paid personnel service and a description of the job in which the job-seeker was placed; and

(4) Any other information determined by the Mayor to be necessary to accomplish the purposes of this chapter.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record is made.

(e) No employer-paid personnel service doing business in the District, or any person employed by or acting as an agent of that employment agency, shall:

(1) Knowingly make referrals to any job for which the requirements, duties, or conditions violate federal or District law;

(2) Knowingly refer any job-seeker to any establishment at which a labor dispute is in progress without informing the job-seeker of the existence of the labor dispute;

(3) Advertise a job opening unless the employer-paid personnel service has on file a bona fide employer order for a job-seeker for that job opening;

(4) Solicit, persuade, or induce any job-seeker to leave any job in which the employer-paid personnel service placed the job-seeker;

(5) Place or attempt to place any person under the age of 18 in any employment where the employment would violate any compulsory education or child labor laws; or

(6) Violate any provision of Chapter 39 of Title 28. (Mar. 13, 1985, D.C. Law 5-136, § 7, 31 DCR 5727.)

**Section references.** — This section is referred to in §§ 28-3904 and 36-1001.

**Legislative history of Law 5-136.** — See note to § 36-1001.

## § 36-1007. Requirements for operation of job listing services.

(a) Each job listing service shall maintain a file of all its advertisements identified by date and publication. All advertisements and other promotional material shall carry the name under which the job listing service is licensed to do business.

(b) Any job listing service which uses any statistics regarding its success rate or other similar statistics in its advertising, promotional materials, or oral or written statements to purchasers or potential purchasers of job lists shall maintain records from which the Mayor can determine the accuracy of these statistics.

(c) Each job listing service shall keep detailed records on forms approved by the Mayor of the sources of information used for the preparation of job lists offered for sale.

(d) The records required by subsections (a) through (c) of this section shall be maintained for 4 years from the date the record was made.

(e) Each job listing service shall identify, on each job list offered for sale, its source of information for the jobs included on that list when the source of information is a publication or other public record.

(f) No job listing service doing business in the District or any person employed by or acting as an agent of that job listing service shall:

(1) Include on any job list offered for sale any job which the job listing service does not know to be vacant within the 15-day period immediately preceding the date the job list is offered for sale; or

(2) Violate any provision of Chapter 39 of Title 28. (Mar. 13, 1985, D.C. Law 5-136, § 8, 31 DCR 5727.)

**Section references.** — This section is referred to in § 28-3904.

**Legislative history of Law 5-136.** — See note to § 36-1001.

## § 36-1008. Discrimination prohibited.

It shall be unlawful for any employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor to fail or refuse to provide service to any person for any reason based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, or political affiliation. (Mar. 13, 1985, D.C. Law 5-136, § 9, 31 DCR 5727.)

**Cross references.** — As to unlawful discriminatory practices in employment, see § 1-2512.

**Legislative history of Law 5-136.** — See note to § 36-1001.

**Section references.** — This section is referred to in § 36-1001.

## § 36-1009. Protection of privacy.

An employment agency, employment counseling service, employer-paid personnel service, or employment counselor shall obtain the express written authorization of a job-seeker before disclosing the job-seeker's name, home address, or telephone number to any person other than to the Mayor or his or her duly authorized representative for the purpose of conducting an investigation pursuant to § 36-1010. (Mar. 13, 1985, D.C. Law 5-136, § 10, 31 DCR 5727.)

**Legislative history of Law 5-136.** — See note to § 36-1001.



**§ 36-1010. Investigations.**

(a) The Mayor may investigate the manner in which all employment agencies, employment counseling services, employer-paid personnel services, and job listing services doing business in the District conduct their businesses, and may examine at any time during business hours any and all books and records of the employment agencies, employment counseling services, employer-paid personnel services, and job listing services to determine compliance with the provisions of this chapter and rules and regulations issued by the Mayor pursuant to this chapter.

(b) The Mayor may further investigate all matters which may aid in the enforcement of this chapter. (Mar. 13, 1985, D.C. Law 5-136, § 11, 31 DCR 5727.)

**Section references.** — This section is referred to in § 36-1009.

**Legislative history of Law 5-136.** — See note to § 36-1001.

**§ 36-1011. Powers of Mayor as to witnesses.**

(a) The Mayor, in the performance of any duty or the execution of any power prescribed by this chapter, may administer oaths or affirmations, certify official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of books, papers, documents, records, and testimony.

(b) In case of failure of any person to comply with a lawful subpoena or of the refusal of any witness to produce evidence or to testify to any matter about which he or she may be lawfully interrogated, the Superior Court of the District of Columbia, upon the application of the Mayor or the Mayor's designee, may compel obedience by proceedings for contempt. (Mar. 13, 1985, D.C. Law 5-136, § 12, 31 DCR 5727.)

**Legislative history of Law 5-136.** — See note to § 36-1001.

**§ 36-1012. Cease and desist orders.**

(a)(1) When the Mayor, after investigation, has cause to believe that any individual, partnership, association, corporation, contractor, or subcontractor is violating any provision of this chapter, the Mayor may issue an order requiring the alleged violator immediately to cease and desist from the violation if the Mayor has reason to believe that immediate irreparable loss and injury to the general public has occurred or will occur. The order shall be served by certified mail or delivery in person.

(2) The alleged violator may request the Mayor to hold a hearing on the alleged violation. Any request for a hearing shall be in writing and shall be made within 15 days of the service of the order.

(3) If a request for a hearing is not made, the order of the Mayor to cease and desist is final.

(4) If, after a hearing, the Mayor determines that the alleged violator is not in violation of this chapter, the Mayor shall revoke the order to cease and desist.

(b)(1) When the Mayor, after investigation, has cause to believe that any individual, partnership, association, corporation, contractor, or subcontractor is violating any provision of this chapter, and has reason to believe that immediate irreparable loss and injury to the general public has not occurred and will not occur, the Mayor shall notify the alleged violator in writing of the existence of the alleged violation.

(2) Within 15 days of receipt of this notification, the alleged violator may show cause to the Mayor in writing why the Mayor should not issue an order requiring the alleged violator to cease and desist from the violation.

(3) If the alleged violator does not respond to the Mayor's show cause request within the prescribed time period, the Mayor may issue an order requiring the alleged violator immediately to cease and desist from the violation.

(4) If the alleged violator responds to the Mayor's show cause request, the Mayor may:

(A) Terminate all proceedings against the alleged violator if, based upon the response of the alleged violator to the show cause request, the Mayor determines that there is no basis for the issuance of a cease and desist order; or

(B) Schedule a hearing, notifying the alleged violator in writing by certified mail of the date, time, and place of the hearing at least 5 days in advance of the hearing.

(5)(A) If, after a hearing, the Mayor determines that the alleged violator is in violation of this chapter, the Mayor shall order the violator to cease and desist from the violation.

(B) If, after a hearing, the Mayor determines that the alleged violator is not in violation of this chapter, the Mayor shall terminate all proceedings against the alleged violator.

(c) If any individual, partnership, association, corporation, contractor, or subcontractor fails to comply with any lawful order of the Mayor issued pursuant to this section, the Mayor may:

(1) Petition a court of competent jurisdiction to issue an order compelling compliance with the lawful order of the Mayor; or

(2) Take any other action authorized by this chapter.

(d) Section 1-1509 applies to proceedings before the Mayor pursuant to this section. (Mar. 13, 1985, D.C. Law 5-136, § 13, 31 DCR 5727.)

**Legislative history of Law 5-136.** — See note to § 36-1001.

## § 36-1013. Mediation or arbitration of disputes.

Upon receipt of a complaint against an employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor, the Mayor may seek to mediate the dispute or arrange

for arbitration by an impartial arbitrator or panel of arbitrators. (Mar. 13, 1985, D.C. Law 5-136, § 14, 31 DCR 5727.)

**Legislative history of Law 5-136.** — See note to § 36-1001.

## § 36-1014. Penalties.

(a) Any individual, partnership, association, corporation, contractor, or subcontractor who opens, operates, or maintains an employment agency, employment counseling service, employer-paid personnel service, or job listing service, or any person acting in the capacity of an employment counselor without first obtaining a license for that purpose shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine not to exceed \$1,000 for each day the violation occurs, or to imprisonment not to exceed 1 year, or both.

(b) The Mayor may, following a hearing, revoke or suspend for a period determined by the Mayor the license of any employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor violating any provision of this chapter.

(c) The Mayor may, following a hearing, order an employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor to make restitution to a complainant for losses or expenses incurred by the complainant as a result of violations of this chapter by the employment agency, employment counseling service, employer-paid personnel service, job listing service or employment counselor.

(d) The Mayor may, following a hearing, impose a fine of not less than \$100 or more than \$1,000 against any employment agency, employment counseling service, employer-paid personnel service, or job listing service found in violation of any provision of this chapter. The fine may be imposed for each violation.

(e) The Mayor may, following a hearing, impose a fine of not less than \$25 or more than \$500 against any employment counselor found in violation of any provision of this chapter. The fine may be imposed for each violation.

(f) Any employment agency, employment counseling service, employer-paid personnel service, job listing service, or employment counselor aggrieved by any order of the Mayor imposing fines, ordering restitution, or suspending or revoking a license may obtain a review thereof in the District of Columbia Court of Appeals pursuant to § 1-1510.

(g) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or the rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infractions shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 13, 1985, D.C. Law 5-136, § 15, 31 DCR 5727; Oct. 5, 1985, D.C. Law 6-42, § 403, 32 DCR 4450.)

**Cross references.** — As to unlawful trade practices, see § 28-3904.

**Section references.** — This section is referred to in § 36-1001.

**Legislative history of Law 5-136.** — See note to § 36-1001.

**Legislative history of Law 6-42.** — Law 6-42, the “Department of Consumer and Regu-



latory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June

25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

### § 36-1015. Rules and regulations; delegation of authority.

(a) The Mayor shall issue, and may amend from time to time, rules and regulations to implement the provisions of this chapter.

(b) By issuance of a Mayor's Order, the Mayor may delegate the powers and duties assigned to the Mayor by this chapter. (Mar. 13, 1985, D.C. Law 5-136, § 17, 31 DCR 5727.)

**Legislative history of Law 5-136.** — See note to § 36-1001.

**5-136.** — See Mayor's Order 86-9, January 16, 1986.

**Delegation of authority pursuant to Law**

### § 36-1016. Exemptions.

The requirements of this chapter shall not apply to:

(1) Any employer who directly hires and compensates employees for the exclusive purpose of furnishing part-time or temporary help to others and does not in any way offer or attempt to place the employees in permanent jobs with any other employer;

(2) Any person conducting a business which, for a fee, prepares resumes for individuals but does not provide, offer, or imply the offer of any other service related to employment;

(3) Bona fide educational, religious, charitable, fraternal, and benevolent organizations in which no fee, commission, or other charge is made for services rendered other than ordinary membership dues or tuition fees;

(4) Bona fide labor organizations securing or attempting to secure employment for their members;

(5) Bona fide employees' organizations securing or attempting to secure employment for their members;

(6) Professional counselors whose advice and counsel to individuals concerning employment is incidental to the primary counseling services provided; or

(7) Any agency or instrumentality of the United States government or the District government. (Mar. 13, 1985, D.C. Law 5-136, § 18, 31 DCR 5727.)

**Legislative history of Law 5-136.** — See note to § 36-1001.

## CHAPTER 11. GOVERNMENT PAY EQUITY AND TRAINING.

Sec.	Sec.
36-1101. Definitions.	36-1105. Cooperation with consultant.
36-1102. Temporary Commission on Pay Equity and Training established.	36-1106. Application.
36-1103. Design and methodology of study; selection of consultants.	36-1107. Final report.
36-1104. Findings and recommendations of consultant.	36-1108. Mayor's recommendations on review of final report.
	36-1109. Funding.

## § 36-1101. Definitions.

For the purposes of this chapter, the term:

- (1) "Council" means the Council of the District of Columbia.
- (2) "District" means the District of Columbia government.
- (3) "Discriminatory wage differentials" means differences in rates of pay resulting from the use of discriminatory wage-setting practices.

- (4) "Discriminatory wage-setting practices":

(A) With regard to gender, means practices resulting in a situation where the rates of pay for positions or position classifications that are dominated (composed 70% or more) by members of 1 sex are lower than the rates of pay for positions or position classifications that are dominated (composed 70% or more) by members of the opposite sex, although the work performed is of comparable value as measured by the composite of the skill, effort, responsibilities, and working conditions normally required in the performance of the work.

(B) With regard to race, means practices resulting in a situation where the rates of pay for positions or position classifications that have a disproportionate representation of employees from a nationally recognized minority race are lower than the rates of pay for positions that are nonminority dominated, although the work performed is of comparable value as measured by the composite of the skill, effort, responsibilities, and working conditions normally required in the performance of the work.

(5) "Effort" means the energy required in the performance of work, including any intellectual or physical energy.

(6) "Employee" means an individual employed by the District or any of its independent agencies, including the public schools of the District of Columbia and the University of the District of Columbia, who performs a function of the District and who receives compensation for the performance of these services.

(7) "Equitable job-evaluation technique" means an objective method of determining the comparable value of different positions or position classifications using a system that rates numerically the composite of the skill, effort, responsibilities, and working conditions normally required in the performance of the work, and that does not discriminate, either intentionally or in its effects, on the basis of race, color, religion, sex, or any other basis prohibited by Chapter 25 of Title 1.

(8) "Mayor" means the Mayor of the District of Columbia.

(9) "Position" means the job an employee holds and the duties and responsibilities assigned to an employee.

(10) "Position classification" means a group or class of positions that is sufficiently similar as to kind or subject matter of work, level of difficulty, responsibility, and qualification requirements to warrant similar treatment in personnel and pay administration.

(11) "Protected classes" means those groups of individuals against whom acts of discrimination are barred by Chapter 25 of Title 1.

(12) "Responsibility" means the duties and obligations involved in the performance of a job, including the extent to which the District relies on an employee to perform the work, the importance of the duties, and the accountability of the employee for the work of others and for resources.

(13) "Skill" means the competence required in the performance of the work including any type of intellectual or physical skill acquired through experience, training, education, or natural ability.

(14) "Working conditions" means the environment in which an employee performs work, including physical and psychological factors. (Feb. 24, 1987, D.C. Law 6-162, § 2, 33 DCR 6684.)

**Legislative history of Law 6-162.** — Law 6-162, the "District of Columbia Government Pay Equity and Training Act of 1986," was introduced in Council and assigned Bill No. 6-219, which was referred to the Committee on Government Operations. The Bill was adopted

on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-208 and transmitted to both Houses of Congress for its review.

## § 36-1102. Temporary Commission on Pay Equity and Training established.

(a) There is established a Temporary Commission on Pay Equity and Training ("Commission").

(b) The Commission shall consist of 15 members appointed as follows:

(1) Five members appointed by the Mayor who shall include:

(A) The Director of the Office of Personnel or the Director's designee;

(B) The Director of the Department of Employment Services or the Director's designee;

(C) The Director of the Office of Human Rights or the Director's designee; and

(D) The Executive Director of the Commission for Women or the Executive Director's designee;

(2) One member appointed by the Chairperson of the Committee on Government Operations;

(3) One member appointed by the Chairperson of the Committee on Housing and Economic Development;

(4) One member appointed by the Chairperson of the Committee on Public Service;

(5) One member appointed by the Board of Education;

(6) The Executive Director of the D.C. General Hospital Commission;

(7) Four members selected from and appointed by a panel composed of 1 officer from each of the 6 largest public sector unions that each serve as the



exclusive representative of employees in more than 5 job classifications and who are:

- (A) More than 30% female; and
- (B) More than 50% minority; and

(8) One member appointed by a panel composed of 1 officer of each of the unions not affiliated with the AFL-CIO representing (as exclusive representatives) a proportion of female employees that is greater than 30%, and a proportion of minority employees that is greater than 50%.

(c) To the extent practicable, appointments under this section shall be made with a view towards maintaining a fair balance reflecting the gender and racial compositions of the District workforce. All Commission members shall be residents of the District.

(d) Members of the Commission shall be appointed within 30 days of February 24, 1987. The chairperson of the Commission shall convene an organizational meeting no later than 15 days after the appointments have been made.

(e) The Commission shall cease to exist 60 days after its report has been submitted to the Council.

(f) Vacancies occurring within the Commission shall be filled in the same manner as the original appointees, as provided for in subsection (b) of this section.

(g) The Commission shall determine its organization and may elect its own officers.

(h) A written transcript or a transcription shall be kept for all meetings at which a vote is taken.

(i) A majority of the members of the Commission shall constitute a quorum.

(j) The Commission shall meet at the call of the chair or a majority of its members, but at least once every 2 months.

(k) Members of the Commission shall not be considered to be employees of the District by reason of appointment to the Commission and shall not receive pay by reason of service as members. In the event that a member is a District employee, that person shall not lose pay as a result of time served on the Commission. (Feb. 24, 1987, D.C. Law 6-162, § 3, 33 DCR 6684.)

**Legislative history of Law 6-162.** — See note to § 36-1101.

### **§ 36-1103. Design and methodology of study; selection of consultants.**

Beginning 30 days after February 24, 1987:

(1) The Commission shall determine the design and methodology of the study and any other matters concerning the conduct of the study that the Commission may consider appropriate. These specifications shall be forwarded to the Department of Administrative Services, which shall prepare and process the solicitation. A list of all respondents to the solicitation shall be forwarded to the Commission by the Department of Administrative Services.

(2) A list of 5 qualified consultants, selected pursuant to competitive bidding procedures, shall be submitted to the Chairman of the Committee on Government Operations and to the Mayor by the Commission. Within 45 calendar days of receipt of the list, the Chairman of the Committee on Government Operations and the Mayor shall meet and select the consultant from the list using the alternate strike method as follows: the Mayor shall strike the 1st name, the Chair of the Committee on Government Operations shall strike the 2nd, and alternate strikes shall continue until 1 name remains. (Feb. 24, 1987, D.C. Law 6-162, § 4, 33 DCR 6684.)

**Section references.** — This section is referred to in §§ 36-1104 and 36-1105.

**Legislative history of Law 6-162.** — See note to § 36-1101.

### § 36-1104. Findings and recommendations of consultant.

(a) In order to carry out the purposes of this chapter, the Department of Administrative Services shall provide, by contract with the consultant selected under § 36-1103, for the conduct of a study and the preparation of a report by the consultant:

(1) Containing the findings of the consultant pursuant to a study that explores whether there are discriminatory wage-setting practices and discriminatory wage differentials within any of the District's position classification systems and includes a list of any positions determined as being subject to discriminatory wage-setting practices and the extent to which any discriminatory wage differentials are attributable to the practices;

(2) Identifying, where applicable, alternative measures for eliminating those discriminatory practices and differentials set forth in the consultant's findings made pursuant to paragraph (1) of this subsection, other than any measure that would result in a reduction in the rate of pay, or a cap on the rate of pay for any position, including proposals relating to the development and use of equitable job-evaluation techniques and training programs for individuals who would be responsible for implementing those measures;

(3) Specifying any measures identified under paragraph (2) of this subsection that are authorized under current law and making recommendations for any legislative, Mayoral, or other action, other than any action that would result in a reduction in the rate of pay for any existing positions, which may be necessary in order to carry out the other measures identified under paragraph (2) of this subsection; and

(4) Setting forth a list showing by bargaining unit, where appropriate, and by pay plan for those employees not covered by collective bargaining agreements, gender and race-dominated classes in the District Career, Educational, Executive, and Excepted Services for which there exists a discriminatory wage differential.

(b) Under the contract, the consultant shall be required to:

(1) Meet jointly with the Commission and the Committee on Government Operations on a regular basis in order to keep the District informed of the progress and other developments in the performance of the study and to obtain any views or recommendations from them; and

(2) Submit a report of his or her findings to the Commission within 18 months after the effective date of the contract.

(c) The information exchanged at the meetings held under subsection (b)(1) of this section shall be considered confidential until the final report is submitted pursuant to § 36-1107. (Feb. 24, 1987, D.C. Law 6-162, § 5, 33 DCR 6684.)

**Section references.** — This section is referred to in § 36-1107.

**Legislative history of Law 6-162.** — See note to § 36-1101.

## § 36-1105. Cooperation with consultant.

(a) Each agency of government shall cooperate with the consultant selected pursuant to § 36-1103(2) in the conduct of the study under this chapter. Each agency shall provide any data, reports, or other information, in a timely manner, that the consultant may request in the course of the study. All information shall be kept confidential by the consultant until the final report is issued.

(b) The Office of Personnel shall provide, in a timely manner, the Commission with any information that the Commission considers necessary in order to carry out its responsibilities under this chapter. All information shall be kept confidential until the final report is issued pursuant to § 36-1107.

(c) Nothing in this section authorizes the disclosure of any information if, or to the extent that, the disclosure would otherwise be prohibited by law.

(d) The Mayor shall provide administrative support, space, and other resources needed by the Commission. (Feb. 24, 1987, D.C. Law 6-162, § 6, 33 DCR 6684.)

**Legislative history of Law 6-162.** — See note to § 36-1101.

## § 36-1106. Application.

Nothing in this chapter shall be construed to limit any of the rights or remedies provided under 42 U.S.C. § 2000e et seq., 29 U.S.C. § 206(d), Chapter 25 of Title 1, or any other provisions of law relating to discrimination on the basis of race, color, religion, sex, or national origin. (Feb. 24, 1987, D.C. Law 6-162, § 7, 33 DCR 6684.)

**Legislative history of Law 6-162.** — See note to § 36-1101.

## § 36-1107. Final report.

Within 180 days after receipt of the consultant's findings, the Commission shall simultaneously submit to the Council, to the Mayor, and to the Chairman of the Committee on Government Operations its final report that shall consist of the consultant's findings, and any written comments of individual Commission members. In the final report the Commission shall also:

(1) Specify a plan including a timetable to carry out each of the consultant's recommendations, or, in the event that the Commission does not specify



a plan to carry out 1 or more of the recommendations, give reasons for not specifying a plan;

(2) Collect and evaluate research findings with respect to training technology and effectiveness;

(3) Identify functional areas where new or expanded training activities and apprenticeship opportunities are needed, specifically for the purpose of providing new opportunities for any groups that are found to be discriminated against based upon the findings of the consultant's study;

(4) Identify methods of improving the interagency coordination of training programs and resources and recruitment to encourage upward mobility in gender and race-dominated career areas;

(5) Advise the Council and the Mayor on means of strengthening programs for training generally in the District;

(6) Analyze and evaluate the skill level, criteria, and proficiency requirements for determining an employee's eligibility for training and career advancement as a result of successful completion of training; and

(7) Submit to the Council estimates of any funds necessary within each bargaining unit or pay plan for the elimination of any discriminatory wage differentials that may be found to exist for position classifications on the list established pursuant to § 36-1104(a)(4). (Feb. 24, 1987, D.C. Law 6-162, § 8, 33 DCR 6684.)

**Section references.** — This section is referred to in §§ 36-1104 and 36-1105.

**Legislative history of Law 6-162.** — See note to § 36-1101.

### **§ 36-1108. Mayor's recommendations on review of final report.**

The Mayor shall review the conclusions and recommendations of the final report and, within a period not to exceed 60 days, shall transmit to the Council his conclusions accompanied by any recommendations, modifications, and reasons thereof. The Council shall consider this transmittal and shall, within a period not to exceed 180 days, develop legislation, if necessary, to implement all or parts of the Commission's final report and the Mayor's recommendations. (Feb. 24, 1987, D.C. Law 6-162, § 9, 33 DCR 6684.)

**Legislative history of Law 6-162.** — See note to § 36-1101.

### **§ 36-1109. Funding.**

There is authorized out of the revenues available to the District sums necessary to carry out the purposes of this chapter. The authorized amount shall not exceed \$200,000. (Feb. 24, 1987, D.C. Law 6-162, § 10, 33 DCR 6684.)

**Legislative history of Law 6-162.** — See note to § 36-1101.

## CHAPTER 12. OCCUPATIONAL SAFETY AND HEALTH.

Sec.	Sec.
36-1201. Definitions.	36-1212. Inspection and investigations.
36-1202. Applicability to employment in work-places.	36-1213. Recordkeeping and reporting.
36-1203. Duties of employer and employees.	36-1214. Citations.
36-1204. Occupational safety and health plan.	36-1215. Procedure for enforcement.
36-1205. District of Columbia Occupational Safety and Health Board.	36-1216. Judicial review and enforcement.
36-1206. Occupational Safety and Health Commission.	36-1217. Nondiscrimination.
36-1207. Powers of administration and enforcement.	36-1218. Procedures to counteract imminent danger.
36-1208. Occupational safety and health standards.	36-1219. Confidentiality of trade secrets.
36-1209. Emergency temporary rules.	36-1220. Civil penalties.
36-1210. Temporary variances; application for temporary order.	36-1221. Criminal penalties.
36-1211. Permanent variances.	36-1222. Action against District government.
	36-1223. Establishment of Office of Occupational Safety and Health; promulgation of rules and regulations.
	36-1224. Applicability.

### § 36-1201. Definitions.

For the purposes of this chapter, the term:

(1) "Authorized employee representative" means a person or persons selected and authorized by the employee or employees of a workplace to assist or represent the employee or employees in exercising their rights under the provisions of this chapter.

(2) "Board" means the District of Columbia Occupational Safety and Health Board established by § 36-1205.

(3) "Commission" means the District of Columbia Occupational Safety and Health Commission established by § 36-1206.

(4) "District" means the District of Columbia.

(5) "Employee" means an individual working for an employer for a salary, wage, or other compensation or pursuant to any other contractual obligation, but does not include domestic servants.

(6) "Employer" means any person, firm, corporation, partnership, stock association, agent, manager, representative, foreman, or any other person having control or custody of any place of employment or of any employee. The term "employer" shall include a District government or quasi-governmental agency and an entity established pursuant to interstate compact. The term "employer" shall not include the United States government or its agencies.

(7) "Federal Act" means the Occupational Safety and Health Act of 1970, approved December 29, 1970 (84 Stat. 1590; 29 U.S.C. § 651 et seq.).

(8) "Inspection" means an examination of a workplace on a routine basis.

(9) "Investigation" means an examination of a specific hazard, accident, injury, or death.

(10) "Plan" means the occupational safety and health plan for the District provided for in § 36-1204.

(11) "Secretary" means the Secretary of the United States Department of Labor.

(12) "Standard" means an occupational safety and health standard that requires conditions or the adoption or use of 1 or more practices, means,

methods, operations, or processes that are reasonably necessary or appropriate to provide safe or healthful employment and places of employment. (Mar. 16, 1989, D.C. Law 7-186, § 2, 35 DCR 8250.)

**Legislative history of Law 7-186.** — Law 7-186, “the District of Columbia Occupational Safety and Health Act of 1988,” was introduced in Council and assigned Bill No. 7-28, which was referred to the Committee on Housing and Economic Development. The Bill was adopted

on first and second readings on September 27, 1988, and October 11, 1988, respectively. Approved without the signature of the Mayor on November 2, 1988, it was assigned Act No. 7-245 and transmitted to both Houses of Congress for its review.

## § 36-1202. Applicability to employment in workplaces.

(a) Except as otherwise provided in this section, this chapter shall apply to employment performed in any workplace in the District.

(b) This chapter shall not apply to the premises of an establishment of the United States government unless the physical premises are controlled by an independent contractor.

(c) Nothing in this chapter shall apply to working conditions of employees whose occupational safety and health is protected by the Atomic Energy Act of 1954 (42 U.S.C. § 2011 et seq.), or with respect to which the United States government exercises exclusive jurisdiction for purposes of occupational safety and health. (Mar. 19, 1989, D.C. Law 7-186, § 3, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1203. Duties of employer and employees.

(a) Each employer shall:

(1) Furnish employees with a place and conditions of employment that are free from recognized hazards that may cause or are likely to cause death or serious physical harm or illness to the employees; and

(2) Comply with all occupational safety and health rules promulgated and orders issued pursuant to this chapter.

(b) Each employee shall comply with all occupational safety and health rules promulgated and orders issued pursuant to this chapter which are applicable to the actions and conduct of the employee. (Mar. 16, 1989, D.C. Law 7-186, § 4, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1214, 36-1220, and 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1204. Occupational safety and health plan.

Within 1 year from March 16, 1989, and pursuant to § 18 of the Federal Act, the Mayor shall adopt and submit to the Secretary an occupational safety and



health plan. The plan shall be consistent with the provisions of this chapter and shall be at least as effective in ensuring safety and healthful workplaces and conditions of employment as the agreements, contracts, standards, rules, and regulations made or promulgated pursuant to the Federal Act. (Mar. 16, 1989, D.C. Law 7-186, § 5, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1201.

**Legislative history of Law 7-186.** — See note to § 36-1201.

**References in text.** — “Section 18 of the Federal Act,” referred to in the first sentence, is 29 U.S.C. § 667.

## § 36-1205. District of Columbia Occupational Safety and Health Board.

(a) There is established within the executive branch of the District, a District of Columbia Occupational Safety and Health Board. The Board shall be composed of 7 members appointed by the Mayor, with the advice and consent of the Council from among those residents of the District who by reason of training, education, or experience are qualified to carry out the functions of the Board.

(b) The Board shall:

(1) Promulgate occupational safety and health standards in accordance with § 36-1208;

(2) Determine variances in accordance with §§ 36-1210 and 36-1211; and

(3) Adopt rules of procedure to govern its orderly operation and the orderly operation of the Commission in accordance with the subchapter I of Chapter 15 of Title 1.

(c) Except as provided in subsection (d) of this section, each member of the Board shall be appointed for a term of 3 years.

(d)(1) The Mayor shall designate a Chairperson of the Board to serve for a term of 3 years.

(2) Two persons shall be appointed from the private sector to represent management, 1 for an initial term of 3 years and 1 for an initial term of 1 year.

(3) Two persons shall be appointed from the private sector to represent labor, 1 for an initial term of 3 years and 1 for an initial term of 1 year.

(4) One person shall be appointed from the public management sector to represent management for an initial term of 2 years.

(5) One person shall be appointed from the public labor sector to represent labor for an initial term of 2 years.

(e) The composition of the Board shall be representative of the working age population of the District in terms of race, ethnic origin, and sex.

(f) Whenever a vacancy on the Board occurs before the end of a term, the Mayor, with the advice and consent of the Council, shall appoint a person to complete the remainder of that term.

(g) The Mayor shall submit nominations to the Board to the Council within 60 days of the date of approval of the plan. The Board shall begin operation when a majority of the members are sworn in. A majority of the members shall constitute a quorum. A quorum is necessary to conduct the business of the Board.

(h) A member of the Board may continue to serve after the expiration of that member's term until a successor is appointed and sworn into office.

(i) The Mayor may remove a member of the Board for incompetence, misconduct, or neglect of duty, after notice to the member. (Mar. 16, 1989, D.C. Law 7-186, § 6, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1201, 36-1206, 36-1207, and 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

**Delegation of Authority Pursuant to D.C. Law 7-186, the "District of Columbia Occupational Safety and Health Act of 1988."** — See Mayor's Order 89-121, May 31, 1989.

## § 36-1206. Occupational Safety and Health Commission.

(a) There is established an Occupational Safety and Health Commission. The Chairperson of the Board or a designee of the Chairperson of the Board shall serve as Chairperson of the Commission. The Chairperson of the Board, 1 labor and 1 management Board member shall serve on the Commission. When the issue is related to employee health, the Commissioner of Public Health or his or her designee shall serve on the Commission as a non-voting member. Members of the Board, other than the Chairperson, shall serve on a rotation basis pursuant to rules established by the Board under § 36-1205(b)(3).

(b) For purposes of carrying out the functions of the Commission, the Commission may operate in panels of 3 members each. Two members of the Commission shall constitute a quorum and any official decision or action shall be made only on the affirmative vote of at least 2 members.

(c) The Commission:

(1) May consider an appeal of any decision or order of the Mayor rendered pursuant to § 36-1215 and may sustain, reverse, modify, or vacate the decision or order of the Mayor or remand the case to the Mayor for further proceedings; and

(2) Shall determine whether the prohibition against discharge or discrimination under § 36-1217 has been violated, issue a decision and order on any violation of § 36-1217 and order all appropriate relief, including rehiring or reinstating the employee to the former position of the employee with back pay.

(d) The Commission shall conduct proceedings in accordance with rules established by the Board pursuant to § 36-1205(b)(3).

(e) Members of the Board and Commission shall be compensated at a rate to be established by the Mayor in accordance with § 1-612.8. No compensation shall be paid to members who are otherwise employed by the District government. (Mar. 16, 1989, D.C. Law 7-186, § 7, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1201, 36-1207, and 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1207. Powers of administration and enforcement.

(a) Except as provided in §§ 36-1205, 36-1206, and 36-1217, the Mayor shall administer and enforce the provisions of this chapter and may, consistent with the provisions of this chapter, delegate any power or authority to a designee of the Mayor.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

(c) The Mayor shall provide consultative services for employers pursuant to rules promulgated by the Mayor.

(d) The Mayor shall, either directly or through grants or contracts:

(1) Conduct educational and training programs to ensure the availability of skilled manpower necessary to carry out the provisions of this chapter, including short-term training of present employees;

(2) Establish and conduct programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe and unhealthful conditions in workplaces subject to this chapter;

(3) Consult with employers, employees, and their respective organizations on the development and staffing of preventive programs; and

(4) Conduct research and undertake demonstrations relating to occupational safety and health matters.

(e) The Mayor shall, to the extent required by the Federal Act, submit reports to the Secretary of Labor in the form and including any information that the Secretary of Labor may require. (Mar. 16, 1989, D.C. Law 7-186, § 8, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

**Delegation of Authority Pursuant to D.C. Law 7-186, the “District of Columbia Occupational Safety and Health Act of 1988.”** — See Mayor’s Order 89-121, May 31, 1989.

## § 36-1208. Occupational safety and health standards.

(a) Whenever an occupational safety and health standard is in effect under section 4(b)(2) or section 6 of the Federal Act, the Board may adopt the standard as the applicable standard for the District by publishing the standard as a rule in accordance with subchapter I of Chapter 15 of Title 1.

(b) Whenever, in the discretion of the Board, it is necessary and proper to promulgate a standard pertaining to an occupational safety and health issue for which there is no established federal standard, or when the Board considers a rule that is different from, but at least as effective as a comparable federal standard and that is necessary to better effectuate the purposes of this chapter, the Board may promulgate, modify, or revoke the occupational safety and health standard in the following manner:

(1) The Board shall publish the proposed standard in the District of Columbia Register and afford interested persons, including employees or their representatives, a period of 30 days after publication of the standard in which



to submit to the Board written comments. On or before the final day of the publication period, any interested person may file with the Board written objections to the proposed standard, stating the grounds for objection. The Board shall hold a public hearing upon any objection to a proposed standard and request for public hearing by publishing, within 30 days after the final day for filing objections, a notice in the District of Columbia Register specifying the time and place of the hearing.

(2) Within 60 days after the expiration of the period provided for the submission of written comments under paragraph (1) of this subsection or, if a hearing is held, within 60 days after completion of the hearing, the Board shall issue a rule promulgating, modifying, or revoking a safety or health standard or make a determination that a rule shall not be issued. The rule shall be published in accordance with subchapter I of Chapter 15 of Title 1. The rule may contain a provision delaying its effective date for a period of not more than 60 days to ensure that affected employers and employees are informed of the existence of the rule, its terms, and that affected employers have an opportunity to familiarize themselves and their employees with the existence and terms of the rule.

(3) Whenever practicable, a rule promulgated pursuant to this subsection shall be based upon consideration of the highest safety and health protection standards for the employee, the latest available scientific data in the field, the feasibility of the standards, and experience gained from implementing this and other health and safety laws. In promulgating a rule on toxic materials or harmful physical agents pursuant to this subsection, the Board shall promulgate a rule that most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity, even if the employee has regular exposure to the toxic materials or physical agent throughout the working life of the employee. Whenever practicable, the rule promulgated shall be expressed in terms of objective criteria and the performance desired.

(c) Any rule applicable to products distributed or used in interstate commerce shall be identical to the comparable federal standard, unless a variation from the federal standard is required by compelling local conditions and the variation does not unduly burden interstate commerce.

(d) Any rule promulgated by the Board pursuant to this chapter shall prescribe, wherever necessary, all means of informing employees of the hazards to which they are exposed, and require:

(1) Labels and other appropriate forms of warning to ensure that workers understand the nature of the hazards to which they are exposed and precautions for safe use and exposure;

(2) Suitable protective equipment where needed, but not as a substitute for appropriate control techniques;

(3) Suitable technological and control techniques;

(4) Monitoring or measuring employee exposure to toxic materials or harmful physical agents at locations and intervals sufficient to afford protection;

(5) Where appropriate, medical examinations at no cost to the employee, with the results made available to the Mayor and to the Commission when

necessary to administer or enforce the provisions of this chapter and to the employee or, at the request of the employee, to the physician of the employee; and

(6) Posting of notices or use of other appropriate means to inform employees of protections and obligations under this chapter, including applicable occupational safety and health rules.

(e) Whenever objections are made to a standard proposed for adoption under subsection (b) of this section, the rule promulgated shall be based upon the record. A person who may be adversely affected by a rule promulgated under paragraph (b)(1) or (2) of this section or under § 36-1209(a) may, at any time prior to 60 days after the rule is promulgated, file a petition challenging the validity of the rule with the District of Columbia Court of Appeals. The filing of the petition shall not, unless ordered by the court, operate as a stay of the rule. The determinations of the Board shall be conclusive if supported by substantial evidence in the record. (Mar. 16, 1989, D.C. Law 7-186, § 9, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1205, 36-1209, 36-1213, 36-1214, 36-1220, 36-1221, and 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

**References in text.** — “Section 4(b)(2) or section 6 of the Federal Act” referred to in (a), is 29 U.S.C. § 653 or 29 U.S.C. § 655, respectively.

## § 36-1209. Emergency temporary rules.

(a) The Board may adopt an emergency temporary rule pursuant to § 1-1506(c) whenever an emergency temporary rule is issued pursuant to the Federal Act or whenever the Board determines:

(1) That employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(2) That an emergency temporary rule is necessary to protect employees from that danger.

(b) When an emergency temporary rule promulgated under the Federal Act has been adopted as an emergency temporary rule by the Board, the rule shall be effective until both the Secretary and the Board have either withdrawn the emergency temporary rule or promulgated a permanent rule superceding the temporary rule, but in no instance shall the rule remain in effect for longer than 120 calendar days.

(c) When the Board has provided for an emergency temporary rule not promulgated under the Federal Act, the rule shall be effective until superceded by a rule promulgated in accordance with § 36-1208(b) or until a determination is made that no rule shall be promulgated, but in no instance shall the rule remain in effect for longer than 120 calendar days.

(d) Notice shall not be a prerequisite to the enforcement of an emergency temporary rule by the Mayor. (Mar. 16, 1989, D.C. Law 7-186, § 10, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1208, 36-1214, 36-1220, 36-1221, and 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203,

36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1210. Temporary variances; application for temporary order.

(a) An employer may apply to the Board for a temporary order granting a variance from a rule or a provision of a rule promulgated pursuant to this chapter. The temporary order shall be granted only if the employer files an application that meets the requirements of subsection (c) of this section and establishes that:

(1) The employer is unable to comply with the rule by its effective date because of the unavailability of professional or technical personnel or materials and equipment needed to come into compliance with the rule or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) The employer is taking all available steps to safeguard the employees of the employer against the hazards covered by the rule which is the subject of the variance; and

(3) The employer has an effective program for coming into compliance with the rule as quickly as practicable.

(b) A temporary order issued pursuant to subsection (a) of this section shall prescribe the practices, means, methods, operations, and processes that the employer must adopt and use while the temporary order is in effect and state, in detail, the employer's program for coming into compliance with the rule. The temporary order may be granted only after notice to the employees of the employer requesting the variance and after there has been an opportunity for a hearing. The Board may issue 1 interim temporary order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the rule or 1 year, whichever is shorter. A temporary order may be renewed not more than twice if the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the temporary order. No interim temporary order renewal may remain in effect for more than 180 days.

(c) An application for a temporary order shall contain:

(1) A specification of the rule or portion of the rule from which the employer seeks a variance;

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the employer is unable to comply with the rule or portion of the rule and a detailed statement of the reasons for the inability to comply;

(3) A statement of the steps that the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the rule;



(4) A statement of when the employer expects to be able to comply with the rule and the steps the employer has taken and will take, with specific dates, to come into compliance with the rule; and

(5) Certification describing how the employees of the employer have been informed of the pending application, that the employees have been informed of their right to petition the Board for a hearing, and that the employees have been informed of the application by:

(A) Providing a copy of the application to the authorized representative of the employee;

(B) Posting a summary of the application at a place that notices to employees are normally posted specifying where a copy of the complete application may be examined; and

(C) Other appropriate means.

(d) The Board is authorized to grant a variance from a rule or portion of a rule whenever the Board determines that a variance is necessary to permit an employer to participate in an experiment approved by the employer and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of employees. (Mar. 16, 1989, D.C. Law 7-186, § 11, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1205, 36-1214, 36-1220, 36-1221, and 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203,

36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1211. Permanent variances.

(a) An affected employer may apply to the Board for a permanent variance from a rule promulgated under this chapter. The employer shall provide to affected employees notice of each application and an opportunity to participate in a hearing. The Board shall issue the requested variance if the Board determines, on the record after there has been an opportunity for an inspection and, where appropriate, a hearing, that the proponent of the variance has demonstrated, by a preponderance of the evidence, that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the employer will provide conditions and places of employment that are as safe and healthful as those that would prevail if the employer complied with the rule.

(b) The variance issued by the Board shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes that the employer must adopt and utilize to the extent that they differ from the rule in question. The Board may modify or revoke the variance upon application by an employer, employee, or by the Board on its own motion, in the manner prescribed for its issuance under this section at any time after 6 months of its issuance. (Mar. 16, 1989, D.C. Law 7-186, § 12, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1205, 36-1214, 36-1220, 36-1221, and 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1212. Inspection and investigations.

(a) In order to carry out the purposes of this chapter, the Mayor, upon presenting appropriate credentials to the employer, is authorized, consistent with constitutional guidelines to:

(1) Enter without delay and at reasonable times, a workplace, where work is performed by an employee of an employer; and

(2) Inspect or investigate during regular work hours, at other reasonable times, within reasonable limits, and in a reasonable manner any place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, records of injuries, illnesses, and exposure to toxic materials and harmful physical agents and to question privately any person having control or custody of the workplace.

(b) The Mayor may administer oaths and require, by subpoena, the testimony of witnesses and the production of all books, registers, and other evidence relative to an inspection or investigation. The Mayor shall prescribe, by rule, fees and mileage to be paid to witnesses. The employer shall not deny regular pay or benefits to an employee subpoenaed by the Mayor as a witness. In case of failure to comply with a subpoena, the Mayor may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of evidence. In the case of contumacy or refusal to obey a subpoena, the court may issue an order requiring an appearance before the court, the production of evidence, and testimony regarding the matter in question. Failure to obey the court order may be punished by the court as contempt.

(c) The employer or a representative of the employer and an employee or an authorized representative of the employee shall be given an opportunity to accompany the Mayor during the physical inspection or investigation of the place of employment to aid in any inspection or investigation of the place of employment. An employee participating in an inspection pursuant to this subsection shall not be subject to wage deduction for a reasonable amount of time spent in connection with the inspection. When there is no employee or authorized employee representative, the Mayor shall consult with a reasonable number of employees concerning occupational safety and health matters in the workplace.

(d) Any person who believes that a violation of an occupational safety and health rule exists, that a violation of this chapter has occurred that threatens physical harm, or that an imminent danger exists may, at any time, request an inspection or investigation by giving notice to the Mayor of the suspected violation or danger. Notice may be given orally or in writing, and shall identify with reasonable particularity the suspected violation or danger.

(e) Notice, including a summary statement prepared by the Mayor setting forth the alleged violation, shall be provided to the employer or the agent of the employer no earlier than at the time of inspection or investigation, unless earlier notice is ordered by the Mayor for good cause. The name of the person

or employees referred to in the request for inspection or investigation shall not appear in the notice to the employer or on any record published, released, or made available pursuant to this chapter.

(f) If upon receipt of notice, the Mayor determines that there is reason to believe that a violation or danger exists, the Mayor shall make an inspection or investigation in accordance with the provisions of this section, as soon as practicable, to determine if the violation or danger exists. If the Mayor determines that there is no reason to believe that a violation or danger exists, the Mayor shall notify the person who requested the inspection or investigation, if known, or the authorized representative of the person who requested the inspection or investigation, and provide a written statement of the final disposition of the case and the reasons. (Mar. 16, 1989, D.C. Law 7-186, § 13, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1213. Recordkeeping and reporting.

(a) Each employer shall make, keep, preserve, and make available to the Mayor any records relating to this chapter that the Mayor may require, by rule, for the enforcement of this chapter or for the development of information regarding the causes and prevention of occupational accidents and illnesses. The rules may include provisions requiring employers to conduct periodic inspections.

(b) The Mayor shall promulgate rules requiring employers to maintain accurate records of and to make periodic reports on work-related deaths, injuries, and illnesses, other than minor injuries requiring minimal treatment, regardless of whether minor injuries are reportable under Chapter 3 of Title 36.

(c) All employers, to the extent required by the Federal Act, shall maintain records and make reports to the Secretary of Labor in the same manner and to the same extent that would be required if no state plan were in effect under 29 U.S.C. § 667(c).

(d) The Mayor shall promulgate rules to require employers to maintain accurate records of employee exposure to any potentially toxic materials or harmful physical agents required to be monitored or measured under § 36-1208. The rules shall provide employees or other authorized representatives the right to observe the monitoring or measuring of potentially toxic materials or harmful physical agents and to access to the records. The rules shall make appropriate provisions for each employee, former employee, or the authorized representative of the employee or former employee to have access to the records on the exposure of the employee or former employee to toxic materials or harmful physical agents and to periodic summaries and other records required to be kept in the workplace under this chapter, except medical records of other employees and former employees. Information contained in records



and reports concerning employee exposure to toxic substances may be made public and disseminated to employers, employees, or other representative organizations without disclosure of the name of individual who is the subject of the physical examination or special study.

(e) Each employer shall promptly notify each employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels that exceed those prescribed by an applicable occupational safety and health rule promulgated under this chapter. Each employer shall promptly undertake to reduce the exposure to compliance levels and inform each employee who is being exposed of the corrective action being taken.

(f) Each employer shall notify the Mayor, within 24 hours, of an accident or occurrence that causes the death of an employee or a life threatening injury requiring the hospitalization of an employee.

(g) Each employer shall submit to the Mayor, within 10 days from the date of an injury or the date that the employer has knowledge of a disease or infection resulting from an injury, a duplicate copy of the report required to be made pursuant to § 36-228(c). (Mar. 16, 1989, D.C. Law 7-186, § 14, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

**References in text.** — The repeal of “§ 36-228(c)”, referred to in (g), is provided for by D.C. Law 7-186, § 25.

## § 36-1214. Citations.

(a) If, upon an inspection or investigation, the Mayor believes that an employer has violated a requirement of § 36-1203 or a rule or order promulgated pursuant to § 36-1208, § 36-1209, § 36-1210, or § 36-1211, the Mayor shall, after completion of the inspection or investigation, issue a citation to the employer in accordance with subsection (e) of this section. The citation shall be served on the employer in person or by certified mail. The Mayor may prescribe procedures for the issuance of a notice instead of a citation for minor violations that have no direct or immediate relationship to safety or health.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the act, rule, or order alleged to have been violated. The Mayor shall, by rule, prescribe reasonable time periods for the abatement of violations and each citation shall fix a time period for abatement in accordance with the rules. Each citation shall specify that the employer has 15 working days, excluding the date of receipt, Saturdays, Sundays, and legal holidays, to notify the Mayor that the employer intends to contest the citation, abatement period, or proposed penalty, if any.

(c) If a civil penalty is proposed to be assessed under § 36-1220, the Mayor shall, concurrently with the issuance of a citation, issue a notice including a reference to the provision of this chapter or rule identifying the proposed penalty and the amount of the proposed penalty.

(d) Each citation issued under this section shall be prominently posted, as prescribed in rules issued by the Mayor, at or near each place of the violation referred to in the notice. Each citation shall be posted immediately upon issuance and, unless otherwise required by rule, shall remain posted until the violation has been abated.

(e) No citation may be issued more than 3 months following the discovery of a violation by the Mayor. (Mar. 16, 1989, D.C. Law 7-186, § 15, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1215, 36-1220, and 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1215. Procedure for enforcement.

(a) If, within the time period following service of a citation specified in § 36-1214, the employer fails to notify the Mayor that the employer intends to contest the citation or proposed penalty and no notice is filed by an employee or representative of the employee under subsection (c) of this section within the time specified, the citation and the notice of the proposed penalty shall be deemed a final order of the Mayor, not subject to administrative or judicial review.

(b) If the Mayor has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction, the Mayor shall notify the employer, by certified mail or by service as prescribed in § 36-1214, of the failure, the proposed penalty under § 36-1220, and that the employer has the time period specified in § 36-1214 within which to notify the Mayor that the employer wishes to contest the citation or the proposed penalty. If, within that time period, the employer fails to notify the Mayor that the employer intends to contest the citation or the proposed penalty, the citation and proposed penalty shall be deemed a final order of the Mayor, not subject to administrative or judicial review.

(c) If an employer notifies the Mayor that the employer intends to contest a citation or a proposed penalty issued under § 36-1214 or notification issued under subsection (b) of this section or if, within the time period specified in § 36-1214 following the issuance of a citation, an employee or employee representative files notice with the Mayor alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Mayor shall immediately afford the employer or employee an opportunity for a hearing and issue a decision and an order based on findings of fact and conclusions of law affirming, modifying, or vacating the citation issued by the Mayor, the time fixed in the citation for the abatement of the violation, or the proposed penalty or directing other appropriate relief. Upon a showing by an employer of a good-faith effort to comply with the abatement requirements of a citation and that abatement has not been completed because of factors beyond the reasonable control of the employer, the Mayor, after an opportunity for a hearing has been provided in accordance with this subsection, shall issue a decision and an order affirming or modifying the abatement requirement in

the citation. The rules of procedure prescribed by the Mayor shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings conducted under this subsection.

(d) The decision and order of the Mayor shall become the final decision and order unless the employer, employee, or representative of the employer or employee files an appeal with the Commission within 30 days after service of the decision or order. The Commission may review the record for error and each party shall be afforded an opportunity to present argument, either orally or in writing as the Commission may prescribe. The Commission shall provide a copy of its decision to each party or the party's representative of record. The Commission may sustain, reverse, modify, or vacate the decision or order of the Mayor or remand the case to the Mayor for further proceedings.

(e) The period for correction of a violation shall not begin to run until the entry of a final order by the Commission, if the employer initiates review proceedings under this section in good faith. (Mar. 16, 1989, D.C. Law 7-186, § 16, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1206, 36-1216, 36-1222, and 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203,

36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1216. Judicial review and enforcement.

(a) Within 60 days of the issuance of a decision or order by the Commission or the issuance of a final order of the Mayor when the Commission does not review a decision or order of the Mayor, an employer, employee, or representative of an employee, suffering a legal wrong or adversely affected or aggrieved by an order or decision of the Commission or an employer, employee, or representative of an employee adversely affected or aggrieved by a final order or decision of the Mayor when the Commission does not review a decision or order is entitled to review by the District of Columbia Court of Appeals in accordance with § 1-1510. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission or the final order of the Mayor when the Commission does not review a decision or order.

(b) If no appeal is taken as prescribed in subsection (a), upon the conclusion of judicial appellate proceeding where a stay has not been granted to the Commission, when the Mayor is upheld by the court when the Commission does review a decision or order, upon the final order of the Mayor when the Commission does review a final decision or order of the Mayor, or when a citation is not contested, the Mayor may apply to the Superior Court to enforce any abatement requirement prescribed. Failure to comply with the abatement order may be punished by the court as contempt. In a contempt proceeding the court may assess the penalties provided in § 36-1220 in addition to other available remedies.

(c) When a penalty has been assessed or imposed by the Mayor under § 36-1215 but not paid and no timely appeal is taken by an affected party



under subsection (a) of this section, upon the conclusion of judicial appellate proceedings in which the Commission or the final order of the Mayor, when the Commission does review the decision or order, is upheld, or where a citation is not contested, the Mayor may file a certified copy of the final order with the Superior Court. Upon notice to the parties, as prescribed by rules issued pursuant to this chapter, the court shall enter judgment. The judgment and all proceedings in relation to it shall have the same effect as a judgment entered in a civil action in the Superior Court. (Mar. 16, 1989, D.C. Law 7-186, § 17, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1222 and 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1217. Nondiscrimination.

(a) No person shall discharge or discriminate against an employee because an employee has filed a complaint, instituted or caused to be instituted a proceeding pursuant to this chapter, testified or is about to testify in a proceeding, exercised a right afforded by this chapter on behalf of the employee or others, or performed any duty pursuant to this chapter.

(b) An employee who believes that he or she has been discharged or otherwise discriminated against in violation of subsection (a) of this section may, within 60 days after the violation, file a complaint with the Commission alleging discrimination. Upon receipt of the complaint, the Chairperson of the Commission shall order an investigation and provide an opportunity for the parties to present evidence to the Commission. If the Commission determines that subsection (a) of this section has been violated, the Commission shall issue a decision and order requiring the person who committed the violation to take necessary and appropriate affirmative action to abate the violation, including rehiring or reinstating the employee to his or her former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the Commission shall notify the complainant of the determination of the Commission pursuant to subsection (b) of this section.

(d) An employer or employee aggrieved by a decision rendered by the Commission pursuant to this action is entitled to review by the District of Columbia Court of Appeals in accordance with § 1-1510.

(e) No employee shall be discharged or otherwise disciplined for refusal to perform work that the employee believes creates a dangerous situation that could cause harm to the physical health or threatens the safety of the employee or another employee, for which the employee is inadequately trained, or under conditions which are in violation of the health and safety rules of the District or federal health and safety or environmental laws. (Mar. 16, 1989, D.C. Law 7-186, § 18, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1206, 36-1207, and 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1218. Procedures to counteract imminent danger.

(a) The Superior Court shall, upon petition of the Mayor, restrain or enjoin conditions or practices in any place of employment which are a danger and could reasonably be expected to cause death or serious physical harm either immediately or before the imminence of danger can be eliminated through enforcement procedures otherwise provided for by this chapter. The court may require steps to be taken to avoid, correct, or remove the imminent danger. The court may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger, or to maintain operation, resume normal operations without a complete cessation of operations, or to permit the cessation of operations to be accomplished in a safe and orderly manner when cessation of operations is necessary.

(b) Upon the filing of a petition, the Superior Court may grant permanent injunctive relief or a temporary restraining order pending the outcome of an enforcement proceeding instituted pursuant to this chapter. No temporary restraining order issued without notice shall be effective for more than 5 days.

(c) The Mayor shall, immediately upon concluding that conditions or practices described in subsection (a) of this section exist in a place of employment, inform the affected employees and employers of the danger and that relief is being sought.

(d) If the Mayor arbitrarily or capriciously fails to seek relief under this section, an employee or employee representative who may be injured by reason of the failure may seek a writ of mandamus in the Superior Court to compel the Mayor to seek an order of relief and any further relief that may be appropriate. (Mar. 16, 1989, D.C. Law 7-186, § 19, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1219. Confidentiality of trade secrets.

All information reported to or otherwise obtained by the Mayor or the Commission in connection with an inspection, investigation, or proceeding under this chapter which contains or which might reveal a trade secret, shall be considered confidential, except that information may be disclosed to other officers or employees when necessary to administer or enforce this chapter. The Mayor, Commission, or court shall issue orders to protect the confidentiality of trade secrets. (Mar. 16, 1989, D.C. Law 7-186, § 20, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## § 36-1220. Civil penalties.

(a) An employer who willfully or repeatedly violates the requirement of § 36-1203, a rule promulgated or order issued pursuant to § 36-1208, § 36-1209, § 36-1210, or § 36-1211, or any other rule promulgated pursuant to this chapter, may be assessed a civil penalty of not more than \$10,000 for each violation.

(b) An employer who has received a citation for a serious violation, as set forth in subsection (g) of this section, of the requirements of § 36-1203, a rule promulgated or order issued pursuant to § 36-1208, § 36-1209, § 36-1210, or § 36-1211, or any other rule promulgated pursuant to this chapter, shall be assessed a civil penalty of not more than \$1,000 for each violation.

(c) An employer who has received a citation for a violation of the requirements of § 36-1203, a rule promulgated or order issued pursuant to § 36-1208, § 36-1209, § 36-1210, or § 36-1211, or any other rule promulgated pursuant to this chapter, when the violation is determined not to be a serious violation, may be assessed a civil penalty of up to \$1,000 for each violation.

(d) An employer who fails to correct a violation for which a citation has been issued pursuant to § 36-1214(a) within the period permitted for its correction may be assessed a civil penalty of not more than \$1,000 for each day a failure or violation continues.

(e) An employer who violates posting or reporting requirements of this chapter shall be assessed a civil penalty of up to \$1,000 for each violation.

(f) The Mayor shall, in assessing civil penalties pursuant to this chapter, consider the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, the history of previous violations, and whether the employer, with the exercise of reasonable diligence, knew or could have known of the presence and seriousness of the violation.

(g) A serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists or from 1 or more practices, means, methods, operations, or processes which have been adopted or are in use in the workplace, unless the employer did not know or could not, with the exercise of due diligence, know of the presence of the violation.

(h) Civil penalties owed pursuant to this chapter shall be paid to the District of Columbia Treasurer for deposit in the General Fund. In addition to any other remedy authorized by law, penalties may be recovered in a civil action in the name of the District government in Superior Court. (Mar. 16, 1989, D.C. Law 7-186, § 21, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1214 to 36-1216, 36-1222, and 36-1224.

**Section effective.** — Section 26 (a) of D.C.

Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.



**Legislative history of Law 7-186.** — See note to § 36-1201.

### § 36-1221. Criminal penalties.

(a) An employer who willfully violates a rule promulgated or order issued pursuant to § 36-1208, § 36-1209, § 36-1210, or § 36-1211 or any other rule promulgated pursuant to this chapter, and that violation causes death to an employee, the employer, shall, upon conviction, be subject to a fine of not more than \$10,000, imprisonment for not more than 6 months, or both. If the conviction is for a second violation of a rule or order referenced in this section, the employer shall be fined not more than \$20,000, imprisoned for not more than 1 year, or both.

(b) A person who gives advance notice of an inspection to be conducted under this chapter, without authority from the Mayor, shall, upon conviction, be fined not more than \$1,000, imprisoned for not more than 6 months, or both.

(c) Whoever knowingly makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be fined not more than \$10,000, imprisoned for not more than 6 months, or both.

(d) Prosecutions brought pursuant to this section shall be in the name of the District of Columbia upon information filed in the Superior Court by the Corporation Counsel. (Mar. 16, 1989, D.C. Law 7-186, § 22, 35 DCR 8250.)

**Section references.** — This section is referred to in §§ 36-1222 and 36-1224.

**Section effective.** — Section 26 (a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

### § 36-1222. Action against District government.

(a) The provisions of §§ 36-1220 and 36-1221 shall not apply to a District government or quasi-government agency or an entity established pursuant to interstate compact, except as provided in subsection (b) of this section.

(b) An affected employee of a District government or quasi-governmental agency or entity established pursuant to interstate compact may bring suit in the Superior Court of the District of Columbia against a District government or quasi-governmental agency or an entity established pursuant to interstate compact for a violation of this chapter. The court shall assess monetary penalties as provided in §§ 36-1220 and 36-1221, except that the penalties shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact, should the affected employee prevail in the suit. Reasonable attorneys fees shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact should the affected employee prevail in the suit, or if, prior to order by the court, the suit is settled in substantial conformity with the relief sought in the petition.

(c) An affected employee of the District government or quasi-governmental agency or an entity established pursuant to interstate compact may bring suit in the nature of mandamus in the Superior Court of the District of Columbia directing the Mayor, the head of the quasi-governmental agency, or the head of the entity established pursuant to interstate compact to comply with the provisions of this chapter. Reasonable attorneys fees shall be awarded to the affected employee against the District government or quasi-governmental agency or entity established pursuant to interstate compact should the affected employee prevail in the suit, or if, prior to order by the court, the suit is settled in substantial conformity with the relief sought in the petition.

(d)(1) When any citation or order finding the District government in violation of this chapter becomes final pursuant to § 36-1215 or § 36-1216, the Mayor shall post in various conspicuous sites around the relevant worksite, notices to read as follows:

**WARNING  
HAZARDOUS WORKSITE**

Pursuant to the District of Columbia Occupational Safety and Health Act of 1988, this worksite, located at (address), has been determined to be hazardous to the health of the employees required to work here. Accordingly, pursuant to Section 18(e) of that act, employees may not be discharged or otherwise disciplined for refusal to perform work under conditions which are in violation of the health and safety rules of the District or federal health and safety or environmental laws. For further information, contact your union representative or the D.C. Office of Occupational Safety and Health (Phone: 576-6339/ Address: 950 Upshur St., N.W.)

(2) The notices shall remain in place until the hazardous conditions are abated. The notices shall also be published daily in at least 2 newspapers of general circulation in the District, and the publication shall continue until the hazardous conditions are abated or the employees are moved to a worksite that complies with the District or federal health and safety or environmental laws. (Mar. 16, 1989, D.C. Law 7-186, § 23, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchap-

ter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

## **§ 36-1223. Establishment of Office of Occupational Safety and Health; promulgation of rules and regulations.**

Upon approval of the plan by the Secretary, the Mayor shall have 2 years to establish the Office of Occupational Safety and Health and to promulgate rules to carry out the provisions of this chapter. Nothing in this chapter shall affect any requirements imposed upon the Mayor by the subchapter I of Chapter 15 of Title 1. (Mar. 16, 1989, D.C. Law 7-186, § 24, 35 DCR 8250.)

**Section references.** — This section is referred to in § 36-1224.

**Section effective.** — Section 26(a) of D.C. Law 7-186 provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of Subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

**Legislative history of Law 7-186.** — See note to § 36-1201.

**Delegation of Authority Pursuant to D.C. Law 7-186,** the “District of Columbia Occupational Safety and Health Act of 1988.” — See Mayor’s Order 89-121, May 31, 1989.

## § 36-1224. Applicability.

(a) Sections 36-1202, 36-1203, 36-1205 through 36-1223, and the repeal of subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

(b) Rules and standards adopted pursuant to any act repealed or superseded by this chapter shall remain in effect following March 16, 1989, unless replaced or repealed by rules and standards promulgated under this chapter.

(c) Nothing in this chapter shall be construed to supercede or in any manner affect any worker’s compensation law or to enlarge or diminish the common law or statutory rights, duties, or liabilities of employers and employees with respect to any injury, disease, or death of an employee arising from or in the course of employment. (Mar. 16, 1989, D.C. Law 7-186, § 26, 35 DCR 8250.)

**Legislative history of Law 7-186.** — See note to § 36-1201.



## CHAPTER 13. FAMILY AND MEDICAL LEAVE.

Sec.

- 36-1301. Definitions.
- 36-1302. Family leave requirement.
- 36-1303. Medical leave requirement.
- 36-1304. Certification.
- 36-1305. Employment and benefits protection.
- 36-1306. School employees.
- 36-1307. Prohibited acts.
- 36-1308. Investigative authority.
- 36-1309. Administrative enforcement procedure; relief.

Sec.

- 36-1310. Enforcement by civil action.
- 36-1311. Notice.
- 36-1312. Effect on other laws.
- 36-1313. Effect on existing employment benefits.
- 36-1314. Encouragement of more generous leave policies.
- 36-1315. [Expired.]
- 36-1316. Applicability.
- 36-1317. Rules.

### § 36-1301. Definitions.

For purposes of this chapter, the term:

(1) "Employee" means any individual who has been employed by the same employer for 1 year without a break in service except for regular holiday, sick, or personal leave granted by the employer and has worked at least 1000 hours during the 12-month period immediately preceding the request for family or medical leave.

(2) "Employer" means any individual, firm, association, or corporation, any receiver or trustee of any individual firm, association, or corporation, or the legal representative of a deceased employer, including the District of Columbia ("District") government, who uses the services of another individual for pay in the District.

(3) "Employment benefit" means any benefit, other than salary or wages, provided or made available to an employee by an employer, including, but not limited to, group life, health, and disability insurance, sick and annual leave, and educational and pension benefits, regardless of whether the benefit is provided by a policy or practice of an employer or by an employee welfare benefit plan as defined in title 1, subtitle A, section 3(3) of the Employee Retirement Income Security Act of 1974, effective September 2, 1974 (88 Stat. 833; 29 U.S.C. 1002(1)).

(4) "Family member" means:

(A) A person to whom the employee is related by blood, legal custody, or marriage;

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, within the last year, a mutual residence and with whom the employee maintains a committed relationship.

(5) "Health care provider" means any person licensed under federal, state, or District law to provide health care services.

(6) "Public safety agency" means the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, or the Department of Corrections.

(7) "Mayor" means Mayor of the District of Columbia.

(8) "Reduced leave schedule" means leave scheduled for a fewer number of hours than an employee usually works during each workweek or workday.

(9) "Serious health condition" means a physical or mental illness, injury, or impairment that involves:

(A) Inpatient care in a hospital, hospice, or residential health care facility; or

(B) Continuing treatment or supervision at home by a health care provider or other competent individual.

(10) "Local educational agency" shall have the same meaning as the term has in section 1471(12) of the Elementary and Secondary Education Act of 1965, approved April 28, 1988 (102 Stat. 201; 20 U.S.C. 2891(12)). (Oct. 3, 1990, D.C. Law 8-181, § 2, 37 DCR 5043.)

**Legislative history of Law 8-181.** — Law 8-181, the "District of Columbia Family and Medical Leave Act of 1990," was introduced in Council and assigned Bill No. 8-82, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 20, 1990, it was assigned Act No. 8-249 and transmitted to both Houses of Congress for its review.

**References in text.** — The reference in (10) to "20 U.S.C. 2891(12)" is obsolete and should now read "20 U.S.C. 8801(18)."

**Delegation of authority pursuant to D.C. Law 8-181, the "D.C. Family and Medical Leave Act of 1990."** — See Mayor's Order 91-38, March 14, 1991.

**Cited in** *Harrison v. Children's Nat'l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996).

## § 36-1302. Family leave requirement.

(a) An employee shall be entitled to a total of 16 workweeks of family leave during any 24-month period for:

(1) The birth of a child of the employee;

(2) The placement of a child with the employee for adoption or foster care;

(3) The placement of a child with the employee for whom the employee permanently assumes and discharges parental responsibility; or

(4) The care of a family member of the employee who has a serious health condition.

(b) The entitlement to family leave under subsection (a)(1) through (3) of this section shall expire 12 months after the birth of the child or placement of the child with the employee.

(c) Subject to the requirements of subsection (h) of this section, in the case of a family member who has a serious health condition, the family leave may be taken intermittently when medically necessary.

(d) Upon agreement between the employer and the employee, family leave may be taken on a reduced leave schedule, during which the 16 workweeks of family leave may be taken over a period not to exceed 24 consecutive workweeks.

(e)(1) Except as provided in paragraphs (2) and (3) of this subsection, family leave may consist of unpaid leave.

(2) Any paid family, vacation, personal, or compensatory leave provided by an employer that the employee elects to use for family leave shall count against the 16 workweeks of allowable family leave provided in this chapter.

(3) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions, and the conditions have

been met, the employee may use the paid leave as family leave and the leave shall count against the 16 workweeks of family leave provided in this chapter.

(4) Nothing in this section shall require an employer to provide paid family leave.

(f) If the necessity for leave under this section is foreseeable based on an expected birth or placement of a child with an employee, the employee shall provide the employer with reasonable prior notice of the expected birth or placement of a child with the employee.

(g) If the necessity for family leave under this section is foreseeable based on planned medical treatment or supervision, an employee shall:

(1) Provide the employer with reasonable prior notice of the medical treatment or supervision; and

(2) Make a reasonable effort to schedule the medical treatment or supervision, subject to the approval of the health care provider of the employee or family member, in a manner that does not disrupt unduly the operations of the employer.

(h)(1) If 2 family members are employees of the same employer:

(A) The employer may limit to 16 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled; and

(B) The employer may limit to 4 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled to take simultaneously.

(2) For the purposes of this subsection, the term "same employer" includes an office, division, subdivision, or other organizational section of an employer in which both employees have the same or interrelated duties and the absence of both employees would disrupt unduly the conduct of the employer's business.

(i)(1) Information that an employee gives to an employer regarding a family relationship, pursuant to which the employee seeks to take family leave under this section, shall be used only to make a decision in regard to the provisions of this chapter. An employer shall keep any information regarding the family relationship confidential.

(2) Any employer who willfully violates this subsection shall be assessed a civil penalty of \$1,000 for each offense. (Oct. 3, 1990, D.C. Law 8-181, § 3, 37 DCR 5043.)

**Section references.** — This section is referred to in §§ 36-1304, 36-1305, 36-1306, and 36-1405.

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Cited in** In re M.M.D., App. D.C., 662 A.2d 837 (1995); Schwartz v. Paralyzed Veterans of America, 930 F. Supp. 3 (D.D.C. 1996).

## § 36-1303. Medical leave requirement.

(a) Subject to the provisions of § 36-1304, any employee who becomes unable to perform the functions of the employee's position because of a serious health condition shall be entitled to medical leave for as long as the employee is unable to perform the functions, except that the medical leave shall not



exceed 16 workweeks during any 24-month period. The medical leave may be taken intermittently when medically necessary.

(b)(1) Except as provided in paragraphs (2) through (4) of this subsection, medical leave may consist of unpaid leave.

(2) Any paid medical or sick leave provided by an employer that the employee elects to use for medical leave shall count against the 16 workweeks of allowable medical leave under this chapter.

(3) If an employer and employee agree that an employee may use paid vacation, personal, or compensatory leave as medical leave, the paid vacation, personal, or compensatory leave shall count against the 16 workweeks of medical leave provided in this chapter.

(4) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions, and the conditions have been met, the employee may use the paid leave as medical leave and the leave shall count against the 16 workweeks of medical leave provided in this chapter.

(c) If the need for medical leave is foreseeable based on planned medical treatment or supervision, the employee shall:

(1) Provide the employer with prior reasonable notice of the medical treatment or supervision; and

(2) Make a reasonable effort to schedule the medical treatment or supervision, subject to the approval of the health care provider of the employee, in a manner that does not disrupt unduly the operations of the employer. (Oct. 3, 1990, D.C. Law 8-181, § 4, 37 DCR 5043.)

**Section references.** — This section is referred to in §§ 36-1304, 36-1305, and 36-1306.

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Maximum protected period is 16 weeks.** — The Family and Medical Leave Act (FMLA) sets up a protected period of only 16 weeks which the employee can choose to take as either paid or unpaid; in no event is the FMLA's protected period longer than 16 weeks. *Harrison v. Children's Nat'l Medical Ctr.*, 121 WLR 405 (Super. Ct. 1993).

The maximum protected period for an employee who is away from work because of illness

is sixteen weeks, whether paid or unpaid, and there is no way to extend the protection of this section beyond that period. *Harrison v. Children's Nat'l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996).

**Paid sick leave counts against 16 workweeks.** — Subsection (b)(2) indicates that should an employee elect to use accumulated paid sick leave during her 16-week Family and Medical Leave Act (FMLA) medical leave, she will not be entitled to "tacking on," because the paid leave also counts against the 16-week FMLA leave. *Harrison v. Children's Nat'l Medical Ctr.*, 121 WLR 405 (Super. Ct. 1993).

## § 36-1304. Certification.

(a) An employer may require that a request for family leave under § 36-1302(a)(4) of medical leave under § 36-1303 be supported by a certification issued by the health care provider of the employee or family member. The employee shall provide a copy of the certification to the employer.

(b) The certification provided by the employee to the employer shall state:

(1) The date on which the serious health condition commenced;

(2) The probable duration of the condition;

(3) The appropriate medical facts within the knowledge of the health care provider that would entitle the employee to take leave under this chapter; and

(4)(A) For purposes of medical leave under § 36-1303, a statement that the employee is unable to perform the functions of the employee's position; or

(B) For purposes of family leave under § 36-1302(a)(4), an estimate of the amount of time that the employee is needed to care for the family member.

(c) For the purposes of § 36-1305(c), the employer may request that certification issued in any case involving medical leave under § 36-1303 include an explanation of the extent to which the employee is unable to perform the functions of the employee's position.

(d)(1) If the employer has reason to doubt the validity of the certification provided under subsection (a) of this section, the employer may require that the employee obtain, at the expense of the employer, the opinion of a 2nd health care provider approved by the employer, in regard to any information required to be certified under subsection (b) of this section.

(2)(A) If the 2nd opinion provided under this subsection differs from the original certification provided under subsection (a) of this section, the employee may obtain the opinion of a 3rd health care provider mutually agreed upon by the employer and the employee, in regard to any information required to be certified under subsection (b) of this section. The employer shall pay the cost of the opinion of the 3rd health care provider.

(B) The opinion of the 3rd health care provider in regard to the information certified under subsection (b) of this section shall be final and binding on the employer and employee.

(e) Any health care provider approved or mutually agreed upon under subsection (d)(1) or (2) of this section may not be retained on a regular basis by the employer or employee or otherwise bear a close relationship to the employer or employee that would give the appearance that the certification is biased.

(f) The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

(g)(1) Certification information requested under this section shall be used only to make a decision in regard to the provisions of this chapter. An employer shall keep any medical information obtained from a certification request confidential.

(2) Any employer who willfully violates this subsection shall be assessed a civil penalty of \$1,000 for each offense. (Oct. 3, 1990, D.C. Law 8-181, § 5, 37 DCR 5043.)

**Section references.** — This section is referred to in § 36-1303.

**Legislative history of Law 8-181.** — See note to § 36-1301.

## § 36-1305. Employment and benefits protection.

(a) Any employee who takes family or medical leave under this chapter shall not lose any employment benefit or seniority accrued before the date on which the family or medical leave commenced.

(b)(1) During any period in which an employee takes family or medical leave under § 36-1302 or § 36-1303, the employer shall maintain coverage under any group health plan, as defined in section 5000(b) of the Internal Revenue

Code of 1986, approved October 21, 1986 (100 Stat. 2012; 26 U.S.C. 5000(b)), except that for the purposes of this chapter, the term “group health plan” shall include a group health plan provided by the District of Columbia government. The employer shall maintain coverage for the duration of the family or medical leave at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment from the date the employee commenced the family or medical leave until the date the employee was restored to employment pursuant to subsection (d) of this section.

(2) An employer may require the employee to continue to make any contribution to a group health plan that the employee would have made if the employee had not taken family or medical leave. If an employee is unable or refuses to make the contribution to the group health plan, the employee shall forfeit the health plan benefit until the employee is restored to employment pursuant to subsection (d) of this section and resumes payment to the plan.

(c)(1) Nothing in this chapter shall prohibit an employer and an employee with a serious health condition from agreeing mutually to alternative employment for the employee throughout the duration of the serious health condition of the employee. Any period of alternative employment shall not cause a reduction in the amount of family or medical leave to which the employee is entitled under § 36-1302 or § 36-1303.

(2) When the employee who agreed to alternative employment is able to perform the functions of the employee’s original position, the employee shall be restored to the original position pursuant to subsection (d) of this section.

(d) Except as provided in subsection (f) of this section, upon return from family or medical leave taken pursuant to § 36-1302 or § 36-1303, the employee shall be:

(1) Restored by the employer to the position of employment held by the employee when the family or medical leave commenced; or

(2) Restored to a position of employment equivalent to the position held by the employee when the family or medical leave commenced that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment.

(e) Except as provided in subsection (b) of this section, nothing in this section shall entitle an employee restored by an employer to a position of employment to:

(1) The accrual of any seniority or employment benefit during any period of family or medical leave; or

(2) Any right, employment benefit, or position of employment other than any right, employment benefit, or position of employment to which the employee would have been entitled had the employee not taken the family or medical leave.

(f)(1) Except as provided in paragraph (2) of this subsection, an employer in the District may deny restoration of employment to a salaried employee if the employee is among the 5 highest paid employees of an employer of fewer than



50 persons or among the highest paid 10% of employees of an employer of 50 or more persons and the following conditions are met:

(A) The employer demonstrates that denial of restoration of employment is necessary to prevent substantial economic injury to the employer's operations and the injury is not directly related to the leave that the employee took pursuant to this chapter; and

(B) The employer notifies the employee of the intent to deny restoration of employment and the basis for the decision at the time the employer determines denial of restoration of employment is necessary.

(2) The condition in paragraph (1)(A) of this subsection shall not apply if the following conditions have been met:

(A) The employer is under a contract to provide work or services and the absence of the employee prohibits the employer from completing the contract in accordance with the terms of the contract;

(B) Failure to complete the contract will cause substantial economic injury to the employer; and

(C) After the employer made reasonable attempts, the employer failed to find a temporary replacement for the employee. (Oct. 3, 1990, D.C. Law 8-181, § 6, 37 DCR 5043.)

**Section references.** — This section is referred to in §§ 36-1304 and 36-1306.

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Purpose of section.** — This section protects an employee's status once she returns within

the protected period, and ensures that employees do not lose benefits or accrued seniority during the protected period. *Harrison v. Children's Nat'l Medical Ctr.*, 121 WLR 405 (Super. Ct. 1993); *Harrison v. Children's Nat'l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996).

## § 36-1306. School employees.

(a) If the conditions in subsection (b) of this section are met, a local educational agency ("educational agency") or private elementary or secondary school ("school") may require an employee who is employed principally in an instructional capacity to elect to:

(1) Take the family or medical leave for periods of particular duration not to exceed the planned medical treatment or supervision; or

(2) Transfer temporarily to an available alternative position offered by the educational agency or school for which the employee is qualified, which has equivalent pay and benefits, and better accommodates the recurring periods of leave than the employee's regular employment position.

(b) The provisions of subsection (a) of this section shall apply if the employee described in subsection (a) of this section:

(1) Elects to take family leave pursuant to § 36-1302(a)(4) or medical leave pursuant to § 36-1303 that is foreseeable based on planned medical treatment or supervision;

(2) Would be on leave for greater than 20% of the total number of working days in the period during which leave would extend; and

(3) Complies with § 36-1302(g) or § 36-1303(c).

(c)(1) If an employee of an educational agency or school who is employed principally in an instructional capacity begins family or medical leave more

than 5 weeks before the end of the academic term, the educational agency or school may require the employee to continue to take leave until the end of the term if:

(A) The leave is at least 3 weeks in duration; and

(B) The return to employment would occur during the 3-week period before the end of the academic term.

(2) If the employee described in paragraph (1) of this subsection begins leave under § 36-1302 or § 36-1303 during the period that commences from more than 3 weeks and up to and including 5 weeks before the end of the academic term, the educational agency or school may require the employee to continue to take leave until the end of the term if:

(A) The leave is greater than 2 weeks in duration; and

(B) The return to employment would occur during the 2-week period before the end of the academic term.

(3) If the employee described in paragraph (1) of this subsection begins leave under § 36-1302 or § 36-1303 during the period that commences 3 weeks or less before the end of the academic term and the duration of the leave is greater than 5 working days, the educational agency or school may require the employee to continue to take leave until the end of the term.

(d) For purposes of a restoration of employment determination under § 36-1305(d)(2), in the case of an educational agency or school, the determination shall be made on the basis of established school board or private school policies and practices and collective bargaining agreements. (Oct. 3, 1990, D.C. Law 8-181, § 7, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

## § 36-1307. Prohibited acts.

(a) It shall be unlawful for any person to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by this chapter.

(b) It shall be unlawful for an employer to discharge or discriminate in any manner against any person because the person:

(1) Opposes any practice made unlawful by this chapter;

(2) Pursuant or related to this chapter:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding; or

(C) Facilitates the institution of a proceeding; or

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this chapter. (Oct. 3, 1990, D.C. Law 8-181, § 8, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

**§ 36-1308. Investigative authority.**

(a) An employer shall develop, maintain, and make available to the Mayor records regarding the employer's activities related to this chapter that the Mayor may prescribe by rule.

(b) To ensure compliance with the provisions of this chapter, the Mayor, consistent with constitutional guidelines, may:

(1) Investigate and gather data regarding any wage, hour, condition, or practice of employment related to this chapter; and

(2) Enter or inspect any place of employment or record required by this chapter.

(c) For the purpose of any investigation provided for in this section, the Mayor may exercise the subpoena authority provided in § 1-338. (Oct. 3, 1990, D.C. Law 8-181, § 9, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

**§ 36-1309. Administrative enforcement procedure; relief.**

(a) The Mayor shall provide an administrative procedure pursuant to which a person claimed to be aggrieved under this chapter may file a complaint against an employer alleged to have violated this chapter. A complaint shall be filed within 1 year of the occurrence or discovery of the alleged violation of this chapter.

(b) The administrative procedure shall include, but not be limited to:

(1) An investigation of the complaint and an attempt to resolve the complaint by conference, conciliation, or persuasion;

(2) If the complaint is not resolved, a determination on the existence of probable cause to believe a violation of this chapter has occurred;

(3) If there is a determination that probable cause exists, the issuance and service of a written notice and a copy of the complaint to the employer alleged to have committed the violation that requires the employer to answer the charges of the complaint at a formal hearing;

(4) A hearing conducted in accordance with procedures that the Mayor shall promulgate pursuant to subchapter I of Chapter 15 of Title 1;

(5) A decision and order accompanied by findings of fact and conclusions of law;

(6) If there is a determination that an employer committed a violation of this chapter, the issuance of an order that requires the employer to pay the employee damages in an amount equal to:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to the employee due to the violation plus interest on the amount calculated at the rate prescribed in § 28-3302(b) or (c); and

(B) An amount equal to the greater of:

(i) The amount determined under subparagraph (A) of this paragraph; or



(ii) Consequential damages not to exceed an amount equal to 3 times the amount determined under subparagraph (A) of this paragraph plus any medical expenses not covered by the health insurance of the employee; or

(C) A reduction in damages, within the discretion of the trier of fact, for an employer who violates this chapter and proves that the violation occurred in good faith and that the employer had reasonable grounds to believe that the employer's action or omission was not in violation of this chapter; and

(7) A provision that authorizes the award of costs and reasonable attorney's fees to the prevailing party in addition to other relief awarded under this chapter.

(c) Any person who is adversely affected or aggrieved by an order or decision issued pursuant to subsection (b) of this section is entitled to judicial review of the order or decision in accordance with § 1-1510, upon filing a written petition for review in the District of Columbia Court of Appeals.

(d)(1) If the Mayor determines that the employer has not complied with an order after 20 days following service of the order, the Mayor shall certify the matter to the Corporation Counsel and to any other agency as may be appropriate for enforcement.

(2) The Corporation Counsel shall institute, in the name of the District, a civil proceeding that may include seeking injunctive relief, as is necessary to obtain complete compliance with the order.

(3) An enforcement action shall not be instituted pending judicial review as provided in subsection (c) of this section.

(e) The entire administrative enforcement procedure outlined in subsections (a) and (b) of this section, including the formal hearing, shall take no longer than 150 days to complete from the date the complaint is filed. If the Mayor fails to make a reasonable effort to comply with the deadline requirements of the administrative enforcement provisions prescribed by this subsection and the rules promulgated by the Mayor, the person who initiated the administrative enforcement procedure against the employer may file a civil action against the employer pursuant to § 36-1310. (Oct. 3, 1990, D.C. Law 8-181, § 10, 37 DCR 5043.)

**Section references.** — This section is referred to in § 36-1310.

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Cited in** *Harrison v. Children's Nat'l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996).

## § 36-1310. Enforcement by civil action.

(a) Subject to the provisions in subsection (b) of this section, an employee or the Mayor may bring a civil action against any employer to enforce the provisions of this chapter in any court of competent jurisdiction.

(b) No civil action may be commenced more than 1 year after the occurrence or discovery of the alleged violation of this chapter.

(c) If a court determines that an employer violated any provision of this chapter, the damages provision prescribed in § 36-1309(b)(6) and § 36-1309(b)(7) shall apply. (Oct. 3, 1990, D.C. Law 8-181, § 11, 37 DCR 5043; July 23, 1994, D.C. Law 10-143, § 2, 41 DCR 3059.)

**Section references.** — This section is referred to in § 36-1309.

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Legislative history of Law 10-143.** — Law 10-143, the “District of Columbia Family and Medical Leave Act of 1990 Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-420, which was referred to the Committee on Economic Development with

comments from the Committee on the Judiciary. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-248 and transmitted to both Houses of Congress for its review. D.C. Law 10-143 became effective on July 23, 1994.

**Cited in** *Harrison v. Children’s Nat’l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996).

## § 36-1311. Notice.

(a) The Mayor shall devise, and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this chapter and information that pertains to the filing of a complaint under this chapter.

(b) Any employer who willfully violates this section shall be assessed a civil penalty not to exceed \$100 for each day that employer fails to post the notice. (Oct. 3, 1990, D.C. Law 8-181, § 12, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Cited in** *Harrison v. Children’s Nat’l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996).

## § 36-1312. Effect on other laws.

Nothing in this chapter shall supersede any provision of law that provides greater employee family or medical leave rights than the family or medical rights established under this chapter. (Oct. 3, 1990, D.C. Law 8-181, § 13, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

## § 36-1313. Effect on existing employment benefits.

(a) Nothing in this chapter shall diminish an employer’s obligation to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to an employee than the family or medical leave rights provided under this chapter.

(b) The rights provided to an employee under this chapter may not be diminished by any collective bargaining agreement or any employment benefit program or plan, except that this chapter shall not supersede any clause on family or medical leave in any collective bargaining agreement in force on October 3, 1990, for the time that the collective bargaining agreement is in effect.

(c) The rights provided to an employee under this chapter may be suspended temporarily for an employee of a public safety agency if the employee is required by rules or regulations of the agency or by the provisions of a collective bargaining agreement to return to duty because of an emergency declared by the agency head or the Mayor. (Oct. 3, 1990, D.C. Law 8-181, § 14, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

### § 36-1314. Encouragement of more generous leave policies.

Nothing in this chapter shall be construed to discourage an employer from the adoption or retention of a family and medical leave policy more generous than the family and medical leave required by this chapter. (Oct. 3, 1990, D.C. Law 8-181, § 15, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Construction of section.** — The language of this section is not only an “encouragement” of employers to be more generous, but also is an

acknowledgment by the legislature that the protective coverage provided by the Family and Medical Leave Act has precise and calculable limits. *Harrison v. Children’s Nat’l Medical Ctr.*, App. D.C., 678 A.2d 572 (1996).

### § 36-1315. Family and Medical Leave Commission established.

Expired.

**Expiration of Family and Medical Leave Commission.** — Subsection (e) of former § 36-1315, which was derived from D.C. Law 8-181, § 16, provided that the Family and Medical Leave Commission “shall continue in existence for 5 years at which time the Commission shall

terminate unless the Council determines that the Commission shall continue in existence or be reestablished.” The Family and Medical Leave Commission is deemed to have expired October 3, 1995.

### § 36-1316. Applicability.

The rights and responsibilities established by this chapter shall apply:

(1) During the 3-year period beginning 180 days from October 3, 1990, to any employer who employs 50 or more persons in the District; and

(2) After the 3-year period beginning 180 days from October 3, 1990, to any employer who employs 20 or more persons in the District. (Oct. 3, 1990, D.C. Law 8-181, § 17, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

### § 36-1317. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter within 90 days from October 3, 1990. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period the proposed rules shall be deemed approved.

(b) The proposed rules shall include standards for:

(1) The definition of the term “family member”;



(2) The reasonable notice that an employee who seeks to take family or medical leave shall give to an employer; and

(3) The administrative enforcement procedure. (Oct. 3, 1990, D.C. Law 8-181, § 18, 37 DCR 5043.)

**Legislative history of Law 8-181.** — See note to § 36-1301.

**Family and Medical Leave Act Rulemaking Approval Resolution of 1991.**

— Pursuant to Resolution 9-64, effective June

14, 1991, the Council approved proposed rules to implement the District of Columbia Family and Medical Leave Act of 1990.

## CHAPTER 14. HEALTH CARE BENEFITS EXPANSION.

Sec.

36-1401. Definitions.

36-1402. Domestic partnership registration and termination procedures.

36-1403. Enforcement by civil action.

36-1404. Domestic partnership benefits.

36-1405. District government employees — Domestic partnership and family member benefits.

Sec.

36-1406. Optional self-financed coverage; District of Columbia Employees Health Benefits Program.

36-1407. Recordkeeping requirements.

36-1408. Effect on existing rights and benefits.

## § 36-1401. Definitions.

For the purposes of this chapter, the term:

(1) "Committed relationship" means a familial relationship between 2 individuals characterized by mutual caring and the sharing of a mutual residence.

(2) "District government employee" means any employee eligible for the District of Columbia Employees Health Benefits Program.

(3) "Domestic partner" means a person with whom an individual maintains a committed relationship as defined in paragraph (1) of this section and who has registered under § 36-1402(a). Each partner shall:

(A) Be at least 18 years old and competent to contract;

(B) Be the sole domestic partner of the other person; and

(C) Not be married.

(4) "Domestic partnership" means the relationship between 2 persons who become domestic partners by registering in accordance with § 36-1402.

(5) "Employee" means any individual employed by an employer.

(6) "Employer" means any individual, firm, partnership, mutual company, joint stock company, association, corporation, unincorporated organization, incorporated society, labor union, receiver, trustee, agent or representative of any of the foregoing, and the District of Columbia government which, for compensation, employs an individual.

(7) "Family member" means:

(A) A domestic partner; or

(B) A dependent child of a domestic partner, which shall include, for the purposes of this section, an unmarried person under 22 years of age, an unmarried person under 25 years of age who is a full-time student, or an unmarried person regardless of age who is incapable of self-support because of a mental or physical disability that existed before age 22. A dependent child of a domestic partner shall include a natural child, adopted child, stepchild, foster child, or child in the legal custody of a domestic partner. (June 11, 1992, D.C. Law 9-114, § 2, 39 DCR 2861.)

**Section references.** — This section is referred to in §§ 36-1404, 36-1405, and 36-1406.

**Legislative history of Law 9-114.** — Law 9-114, the "Health Care Benefits Expansion Act of 1992," was introduced in Council and as-

signed Bill No. 9-162, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 15, 1992, it

was assigned Act No. 9-188 and transmitted to both Houses of Congress for its review. D.C. Law 9-114 became effective on June 11, 1992.

**Mayor authorized to issue rules.** — Section 10 of D.C. Law 9-114 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of the act.

**Delegation of Authority under D.C. Act 9-114, the Health Care Benefits Expansion Act of 1992.** — See Mayor's Order 92-102, September 14, 1992.

**Feasibility Study for Federal Employees Health Benefits Program.** — See § 8 of the Health Care Benefits Expansion Act of 1992 (D.C. Law 9-114).

## § 36-1402. Domestic partnership registration and termination procedures.

(a) To establish the existence of a domestic partnership and to qualify for benefits under §§ 36-1404, 36-1405, and 36-1406, persons shall register as domestic partners by executing a declaration of domestic partnership to be filed with the Mayor. For the purposes of this section, the declaration shall be signed by the domestic partners and shall affirm under penalty of perjury that each domestic partner:

- (1) Is at least 18 years old and competent to contract;
- (2) Is the sole domestic partner of the other person; and
- (3) Is not married.

(b) Before accepting a declaration of domestic partnership, the Mayor may examine any applicant under oath to ascertain the names and ages of the persons desiring to register as domestic partners and any other information as required by subsection (a) of this section.

(c) All information contained in a declaration of domestic partnership, except the address of the partners, shall be open to inspection as a public record.

(d) A domestic partner may terminate the domestic partnership by filing a termination statement with the Mayor. The person filing the termination statement shall declare that:

- (1) The domestic partnership is to be terminated; and

(2) A copy of the termination statement has been served on the other domestic partner if the termination statement is not signed by both domestic partners.

(e) A termination statement filed pursuant to subsection (d) of this section shall take effect 6 months after the statement is filed. During this period, benefits shall continue to accrue.

(f) A District government employee who is separated from service, or an employee's dependent child who ceases to be a dependent, may be eligible for extended health benefits coverage in accordance with § 1-622.14.

(g) In accordance with the rules issued pursuant to § 36-1407, the Mayor may charge a fee for filing a declaration of domestic partnership, a domestic partnership termination statement, and for filing any amendments to the declaration or termination statement.

(h) Private sector employees may register as domestic partners by executing a declaration of domestic partnership to be filed with the Mayor in accordance with subsections (a) through (g) of this section. (June 11, 1992, D.C. Law 9-114, § 3, 39 DCR 2861.)



**Section references.** — This section is referred to in § 36-1401.

**Legislative history of Law 9-114.** — See note to § 36-1401.

### § 36-1403. Enforcement by civil action.

Any person or employer may bring a civil action in any court of competent jurisdiction against the appropriate domestic partner(s) to recover damages as a result of:

(1) A false statement in a declaration of domestic partnership or a false assertion of family membership; or

(2) A failure to notify the Mayor or the employer of a change in the status of the domestic partnership or family membership. (June 11, 1992, D.C. Law 9-114, § 4, 39 DCR 2861.)

**Section references.** — This section is referred to in § 36-1402.

**Legislative history of Law 9-114.** — See note to § 36-1401.

### § 36-1404. Domestic partnership benefits.

All health care facilities, including hospitals, convalescent facilities, or other long term care facilities, shall allow a patient's family member as defined in § 36-1401(7) to visit the patient. (June 11, 1992, D.C. Law 9-114, § 5, 39 DCR 2861.)

**Section references.** — This section is referred to in § 36-1402.

**Legislative history of Law 9-114.** — See note to § 36-1401.

### § 36-1405. District government employees — Domestic partnership and family member benefits.

(a) A District government employee shall be granted sick leave when needed to care for a family member as defined in § 36-1401(7), subject to the same guidelines and restrictions in § 36-1302.

(b) A District government employee shall be granted sick leave to care for a minor child of either domestic partner or to care for the employee's domestic partner who is on maternity or paternity leave, subject to the same guidelines and restrictions in § 36-1302.

(c) A District government employee shall be granted funeral leave or annual leave when needed to make arrangements for or attend a funeral or memorial service for a family member as defined in § 36-1401(7), subject to the same guidelines and restrictions in § 1-613.3(n).

(d) A District government employee who is adopting or whose domestic partner is adopting a child shall be granted annual leave or leave without pay to make necessary family arrangements, subject to the same guidelines and restrictions in § 36-1302. (June 11, 1992, D.C. Law 9-114, § 6, 39 DCR 2861.)

**Section references.** — This section is referred to in § 36-1402.

**Legislative history of Law 9-114.** — See note to § 36-1401.

**§ 36-1406. Optional self-financed coverage: District of Columbia Employees Health Benefits Program.**

District government employees enrolled in the District of Columbia Employees Health Benefits Program shall be allowed to purchase family health insurance coverage that would cover the employee's family members as defined in § 36-1401(7) in accordance with §§ 1-622.5, 1-622.6, and 1-622.7(a), (c), and (d). A domestic partner shall not simultaneously be enrolled for individual and family member coverage. The employee shall assume the total additional cost of the family health insurance coverage for the domestic partner or family members as defined in § 36-1401(7). (June 11, 1992, D.C. Law 9-114, § 7, 39 DCR 2861.)

**Section references.** — This section is referred to in § 36-1402.

**Legislative history of Law 9-114.** — See note to § 36-1401.

**§ 36-1407. Recordkeeping requirements.**

(a) The Mayor shall maintain adequate records of declarations of domestic partnership, termination statements, and amendments to declarations of domestic partnership and termination statements.

(b) The Mayor shall report annually to the Council on:

- (1) The number of domestic partnerships declared and terminated; and
- (2) Utilization of domestic partnership benefits by District government employees. (June 11, 1992, D.C. Law 9-114, § 9, 39 DCR 2861.)

**Section references.** — This section is referred to in § 36-1402.

**Legislative history of Law 9-114.** — See note to § 36-1401.

**§ 36-1408. Effect on existing rights and benefits.**

(a) Nothing in this chapter shall supersede any provision of law that provides more generous rights or benefits than the domestic partnership or family membership rights and benefits provided pursuant to this chapter.

(b) Nothing in this chapter shall be construed to discourage an employer from providing more generous rights or benefits than the domestic partnership or family membership rights or benefits provided pursuant to this chapter.

(c) Nothing in this chapter shall diminish an employer's obligation to comply with a collective bargaining agreement or an employment benefits program or plan that provides more generous rights or benefits than the domestic partnership or family membership rights or benefits provided pursuant to this chapter.

(d) The domestic partnership or family membership rights or benefits provided pursuant to this chapter shall not be diminished by a collective bargaining agreement or an employment benefit program or plan, except that this chapter shall not supersede any clause on domestic partnership or family membership rights or benefits in a collective bargaining agreement in force on June 11, 1992, excluding any extension or renewal after such date, that the collective bargaining agreement is in effect.

(e) No provision of this chapter shall exempt or relieve, or be construed to exempt or relieve, any person from any duty, liability, penalty, or obligation to provide relief under Chapter 25 of Title 1.

(f) This chapter provides registration and other mechanisms to reduce discrimination prohibited under Chapter 25 of Title 1. (June 11, 1992, D.C. Law 9-114, § 12, 39 DCR 2861.)

**Legislative history of Law 9-114.** — See note to § 36-1401.



## CHAPTER 15. DISPLACED WORKERS PROTECTION.

Sec.

36-1501. Covered employees.

36-1502. Transition employment period.

36-1503. Enforcement.

## § 36-1501. Covered employees.

(a) This chapter shall apply to the following employees, except persons employed less than 15 hours per week and except persons employed in an executive, administrative, or professional capacity as defined by the Secretary of Labor under § 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 213(a)(1)) or required by District of Columbia law in effect on April 26, 1994, to possess an occupational license:

(1) Employees hired by a contractor as food service workers in a hotel, restaurant, cafeteria, apartment building, hospital, nursing care facility, or similar establishment.

(2) Employees hired by a contractor to perform janitorial or building maintenance services in an office building, institution, or similar establishment.

(3) Nonprofessional employees hired by a contractor to perform health care or related support services in a hospital, nursing care facility, or similar establishment.

(b) For the purposes of this chapter "contractor" includes a subcontractor and means an individual or company that employs 25 or more persons. (Apr. 26, 1994, D.C. Law 10-105, § 2, 41 DCR 1011.)

**Legislative history of Law 10-105.** — Law 10-105, the "Displaced Workers Protection Act of 1994," was introduced in Council and assigned Bill No. 10-307, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-193 and transmitted to both Houses of Congress for its review. D.C. Law 10-105 became effective on April 26, 1994.

**Mayor authorized to issue rules.** — Section 5 of D.C. Law 10-105 provided that the Mayor shall promulgate rules to implement this chapter.

**Chapter unenforceable.** — This chapter is preempted by the federal National Labor Relations Act, 29 U.S.C. § 151 et seq., and is thus invalid and unenforceable. *Washington Serv. Contractors Coalition v. District of Columbia*, 858 F. Supp. 1219 (D.D.C. 1994).

Because the Displaced Workers Protection Act of 1994 (this chapter) attempts to regulate an area that Congress has left unregulated and does so in a way that upsets the traditional balance of power in labor relations, this chapter is preempted by the federal National Labor

Relations Act. *Washington Serv. Contractors Coalition v. District of Columbia*, 858 F. Supp. 1219 (D.D.C. 1994).

The Displaced Workers Protection Act of 1994 (this chapter) conflicts with § 14(a) of the federal National Labor Relations Act by requiring employers to treat supervisors as employees and thus infringes upon contractors' abilities to ensure the loyalty of their supervisors. Additionally, this chapter appears to violate § 14(a) because it provides supervisors with a cause of action if they are discharged for union activities. *Washington Serv. Contractors Coalition v. District of Columbia*, 858 F. Supp. 1219 (D.D.C. 1994).

**Preemption by federal law.** — Since the local authority, the District, has not disturbed the process established by the National Labor Relations Authority (NLRA) for resolving labor disputes, but, instead, the District has enacted substantive employee protective legislation having nothing to do with rights to organize or bargain collectively, the NLRA does not preempt such legislation. *Washington Serv. Contractors Coalition v. District of Columbia*, 54 F.3d 811 (D.C. Cir. 1995).

## § 36-1502. Transition employment period.

(a) The present contractor within a period of 10 days after the awarding of a contract shall make available to prospective contractors the names of all employees of the present contractor employed at the site or sites covered by the prospective contract, the date each employee was hired, and the employee's occupation classification.

(b) A new contractor who is awarded a contract to provide similar covered services provided by the previous contractor shall retain, for a 90-day transition employment period, covered employees who have been employed by the previous contractor for the preceding 8 months or longer at the site or sites covered by the contract.

(c) If at any time, the new contractor determines that fewer employees are required to perform the new contract than were required by the previous contractor, the new contractor shall retain employees by seniority within job classification.

(d) During the 90-day transition employment period, the new contractor shall maintain a preferential hiring list of eligible covered employees not retained by the new contractor from which the new contractor may hire additional employees.

(e) Except as provided in subsection (c) of this section, the new contractor shall not discharge an employee retained pursuant to this chapter during the 90-day transition period without cause.

(f) At the end of the 90-day transition employment period, the new contractor shall perform a written performance evaluation for each employee retained pursuant to this chapter. If the employee's performance during the 90-day transition employment period is satisfactory, the new contractor shall offer the employee continued employment under the terms and conditions established by the new contractor.

(g) If a contractor's contract at an establishment in the District of Columbia is not renewed, and within 30 days the contractor is awarded a similar contract at another establishment in the District of Columbia, the contractor shall retain at least 50% of the employees from each establishment as needed to perform the contract. (Apr. 26, 1994, D.C. Law 10-105, § 3, 41 DCR 1011; Apr. 18, 1996, D.C. Law 11-110, § 43, 43 DCR 530.)

**Effect of amendments.** — D.C. Law 11-110 inserted "at least" in (g).

**Legislative history of Law 10-105.** — See note to § 36-1501.

**Legislative history of Law 11-110.** — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 36-1503. **Enforcement.**

(a) An employee who has been wrongfully discharged by a new contractor may bring an action in the Superior Court of the District of Columbia and may be awarded:

(1) Back pay for each day the violation continues at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification; or

(B) The final regular rate received by the employee; and

(2) Costs of benefits the new contractor would have incurred for the employee under the new contractor's benefit plan.

(b) In any suit, the court shall allow the prevailing party reasonable attorney's fees as part of the costs recoverable.

(c) This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination. (Apr. 26, 1994, D.C. Law 10-105, § 4, 41 DCR 1011.)

**Legislative history of Law 10-105.** — See note to § 36-1501.



## CHAPTER 16. PARENTAL LEAVE.

Sec.

36-1601. Definitions.

36-1602. Amount of leave; denial; form; notice.

36-1603. Effect of leave on employment benefits or seniority.

Sec.

36-1604. Administrative enforcement procedure; relief.

36-1605. Enforcement by civil action.

36-1606. Notice.

## § 36-1601. Definitions.

For purposes of this chapter, the term:

(1) "Employer" means any individual, firm, association, corporation, the District of Columbia government, any receiver or trustee of any individual firm, association, or corporation, or the legal representative of a deceased employer, who uses the services of an individual ("employee") for pay in the District.

(2) "Parent" means:

(A) The natural mother or father of a child;

(B) A person who has legal custody of a child;

(C) A person who acts as a guardian of a child regardless of whether he or she has been appointed legally as such;

(D) An aunt, uncle, or grandparent of a child; or

(E) A person who is married to a person listed in subparagraphs (A) through (D) of this paragraph.

(3) "School-related event" means an activity sponsored by either a school or an associated organization such as a parent-teacher association. A school-related event includes: a student performance such as a concert, play, or rehearsal; the sporting game of a school team or practice; a meeting with a teacher or counselor; or any similar type of activity. A school-related event shall involve the parent's child directly either as participant or subject but not as a spectator. (Aug. 17, 1994, D.C. Law 10-146, § 2, 41 DCR 4477; Apr. 18, 1996, D.C. Law 11-110, § 44(a), 43 DCR 530.)

**Effect of amendments.** — D.C. Law 11-110 validated previously made stylistic and punctuation changes in (3).

**Legislative history of Law 10-146.** — Law 10-146, the "Parental Leave Act," was introduced in Council and assigned Bill No. 10-359, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on May 3, 1994, and June 7, 1994, respectively. Signed by the Mayor on June 23, 1994, it was assigned Act No. 10-259 and transmitted to both Houses of Congress for its review. D.C. Law 10-146 became effective on August 17, 1994.

**Legislative history of Law 11-110.** — Law

11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Delegation of Authority Pursuant to D.C. Law 10-146, the "D.C. Parental Leave Act of 1994."** — See Mayor's Order 95-66, May 2, 1995.

**§ 36-1602. Amount of leave; denial; form; notice.**

(a) Except as provided in this section, an employee who is a parent shall be entitled to a total of 24 hours leave during any 12 month period to attend or participate in school-related events for his or her child.

(b) An employer may deny the leave provided by subsection (a) of this section only if the granting of leave would disrupt the employer's business and make the achievement of production or service delivery unusually difficult.

(c) The leave provided by this section may consist of unpaid leave unless the parent elects to use any paid family, vacation, personal, compensatory, or leave bank leave that has been provided by the employer.

(d) Any employee shall notify the employer of the desire for leave to attend a school-related event at least 10 calendar days prior to the event, unless the need to attend the school-related event cannot be reasonably foreseen. (Aug. 17, 1994, D.C. Law 10-146, § 3, 41 DCR 4477.)

**Legislative history of Law 10-146.** — See note to § 36-1601.

**§ 36-1603. Effect of leave on employment benefits or seniority.**

An employee who takes leave pursuant to § 36-1602 shall not lose any employment benefit or seniority accrued before or during the date of such leave. (Aug. 17, 1994, D.C. Law 10-146, § 4, 41 DCR 4477.)

**Legislative history of Law 10-146.** — See note to § 36-1601.

**§ 36-1604. Administrative enforcement procedure; relief.**

(a) The Mayor shall provide an administrative procedure pursuant to which a person claimed to be aggrieved under this chapter may file a complaint against an employer alleged to have violated this chapter. A complaint shall be filed within 1 year of the occurrence or discovery of the alleged violation of this chapter.

(b) The administrative procedure shall include, but not be limited to:

(1) An investigation of the complaint and an attempt to resolve the complaint by conference, conciliation, or persuasion;

(2) If the complaint is not resolved, a determination on the existence of probable cause to believe a violation of this chapter has occurred;

(3) If there is a determination that probable cause exists, the issuance and service of a written notice and a copy of the complaint to the employer alleged to have committed the violation that requires the employer to answer the charges of the complaint at a formal hearing;

(4) A hearing conducted in accordance with procedures that the Mayor shall promulgate pursuant to subchapter I of Chapter 15 of Title 1;

(5) A decision and order accompanied by findings of fact and conclusions of law;

(6) If there is a determination that an employer committed a violation of this chapter, the issuance of an order that requires the employer to pay the employee damages in an amount equal to:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to the employee due to the violation plus interest on the amount calculated at the rate prescribed in § 28-3302(b) or (c);

(B) An amount equal to the greater of:

(i) The amount determined under subparagraph (A) of this paragraph; or

(ii) Consequential damages not to exceed an amount equal to 3 times the amount determined under subparagraph (A) of this paragraph plus any medical expenses not covered by the health insurance of the employee; and

(C) A reduction in damages, within the discretion of the trier of fact, for an employer who violates this chapter and proves that the violation occurred in good faith and that the employer had reasonable grounds to believe that the employer's action or omission was not in violation of this chapter; and

(7) A provision that authorizes the award of costs and reasonable attorney's fees to the prevailing party in addition to other relief awarded under this chapter.

(c) Any person who is adversely affected or aggrieved by an order or decision issued pursuant to subsection (b) of this section is entitled to judicial review of the order or decision in accordance with § 1-1510, upon filing a written petition for review in the District of Columbia Court of Appeals.

(d)(1) If the Mayor determines that the employer has not complied with an order after 20 days following service of the order, the Mayor shall certify the matter to the Corporation Counsel and to any other agency as may be appropriate for enforcement.

(2) The Corporation Counsel shall institute, in the name of the District, a civil proceeding that may include seeking injunctive relief, as is necessary to obtain complete compliance with the order.

(3) An enforcement action shall not be instituted pending judicial review as provided in subsection (c) of this section.

(e) The entire administrative enforcement procedure outlined in subsections (a) and (b) of this section, including the formal hearing, shall take no longer than 150 days to complete from the date the complaint is filed. If the Mayor fails to make a reasonable effort to comply with the deadline requirements of the administrative enforcement provisions prescribed by this subsection and the rules promulgated by the Mayor, the person who initiated the administrative enforcement procedure against the employer may file a civil action against the employer pursuant to § 36-1605. (Aug. 17, 1994, D.C. Law 10-146, § 5, 41 DCR 4477; Apr. 18, 1996, D.C. Law 11-110, § 44(b), 43 DCR 530.)

**Section references.** — This section is referred to in § 36-1605.

**Effect of amendments.** — D.C. Law 11-110 validated previously made stylistic changes in (b)(6)(A) and (B); and validated a previously made punctuation change in (d)(2).

**Legislative history of Law 10-146.** — See note to § 36-1601.

**Legislative history of Law 11-110.** — See note to § 36-1601.



**§ 36-1605. Enforcement by civil action.**

(a) Subject to the provisions in subsection (b) of this section, an employee or the Mayor may bring a civil action against any employer to enforce the provisions of this chapter in any court of competent jurisdiction.

(b) No civil action may be commenced more than 1 year after the occurrence or discovery of the alleged violation of this chapter.

(c) If a court determines that an employer violated any provision of this chapter, the damages provision prescribed in § 36-1604(b)(6) and (c) shall apply. (Aug. 17, 1994, D.C. Law 10-146, § 6, 41 DCR 4477.)

**Section references.** — This section is referred to in § 36-1604. **Legislative history of Law 10-146.** — See note to § 36-1601.

**§ 36-1606. Notice.**

(a) The Mayor shall devise and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this chapter and information that pertains to the filing of a complaint under this chapter.

(b) Any employer who willfully violates this section shall be assessed a civil penalty not to exceed \$100 for each day that employer fails to post the notice. (Aug. 17, 1994, D.C. Law 10-146, § 7, 41 DCR 4477.)

**Legislative history of Law 10-146.** — See note to § 36-1601.









